

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29869
Docket No. CL-30232
93-3-91-3-734

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(Houston Belt & Terminal Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the
Union (GL-10645) that:

1. The Houston Belt & Terminal Railway Company violated the Agreement effective April 15, 1972, as amended, when it required clerical employee J. A. Hodges to undergo training on the same work day that Ms. Hodges was expected to perform service, and in fact, did protect a known vacancy.
2. The Houston Belt & Terminal Railway Company shall be required to compensate clerical employee J. A. Hodges four (4) hours' pay at the overtime rate for date of November 26, 1990."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On November 26, 1990, Claimant, an Extra Board employee, was assigned to train on Position No. 119, 7:00 AM - 3:00 PM. That same day she worked Position D772, 10:00 PM - 7:00 AM. For the two assignments she was paid 16 hours straight time pay. She is seeking an additional four hours pay, representing overtime, for

the second assignment. At issue is the application of a provisions of Rule 60, Training Agreement, reading:

"It is understood Carrier will not require an employee to undergo training on the same work day he also performs service or is expected to perform service; however, in the event Carrier cannot foresee the possibility of performance of work on a particular day and, therefore, is unable to avoid training and service on the same day, no penalty payment shall apply. In the event an employee is called to service on a day he has also spent training, he may elect to decline service for which called (provided the vacancy can be filled at the straight time rate), in which event the employee declining service will not forfeit his standing on the board."

The Organization maintains that Carrier should have foreseen the possibility of Claimant working and training on the same day, with Carrier arguing that Claimants utilization on Position D772 was not foreseeable. Both the Carrier and the Organization have offered proofs in support of their contentions. However, the proofs of the Organization appear more persuasive. Early on, the Organization noted that at the time Claimant was instructed to train on Job 119, Carrier was aware of the fact that a vacancy existed on Position D772 and that there was no employees on the Freight Agency Extra List qualified to fill that vacancy. (Three days before Claimant worked the vacancy on Position D772, Carrier had abolished two positions on the Extra Board for the Freight Agency, thus exhausting the Board.) This assertion was not adequately answered by Carrier. Instead, it insisted at that time that when an employee is used for training and work on the same day, no penalty payment shall apply even though the vacancy could not be foreseen.

The language from Rule 60, quoted above, is an exception to the overtime provisions of the Agreement, which contemplate that service (including training and work) in excess of 8 hours in a work day be paid for at time and one half rates. It is not an automatic exception applicable in all instances when an employee performs both training and service on the same day. The exception is conditional, it only applies in instances where the possibility of performance of training and work on the same day could not be foreseen and was unable to be avoided.

The Organization has demonstrated in this case that the possibility of having Claimant train and work on the same day could

Form 1
Page 3

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Docket No. CL-30232
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have been foreseen because the vacancy was there and the Extra Board was exhausted. In these circumstances the exception that no penalty shall apply is not applicable. The claim has merit. It will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.