

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30027
Docket No. CL-30628
94-3-92-3-400

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: (
(CSX Transportation, Inc. (former
(Seaboard Coastline Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-10810) that:

1. Carrier was in error when it improperly placed Claimant J. T. Porter, after Clerk Porter had called for a known vacancy within the terminal from the Guaranteed Extra Board, back on the Guaranteed Extra Board, thus not allowing clerk Porter to remain on the vacancy for the duration of such vacancy, and then called Clerk Porter for a different vacancy at a different starting time on December 26, 1990.
2. Carrier shall because of the above violation, compensate Clerk Porter the difference between straight time and time and one-half for Job 161 for December 26, 27 and 28, 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 13, 1990, Claimant an employee carried on the Savannah Guaranteed Extra Board, was called to protect a vacancy on open Position 4F79-358, Office Porter that was being advertised for bids for ten days. No bids were received and the position remained

open. Thereafter, Claimant continued to work the assignment as contemplated by that part of Section II(e) of the Extra Board Agreement, reading:

"(e) Extra Board employee called for vacancy within the Terminal will remain thereon for the duration of such vacancy except that he will not be permitted to work more than forty straight time hours in the work week (Monday through Sunday)."

When Position 4F79-358 was annulled for the Thanksgiving Day holidays, November 22-23, 1990, Claimant was continued on the assignment. However, when the position was annulled for the Christmas holidays, December 24-25, 1990, Claimant was reassigned to the Extra Board. On December 26, 1990, Claimant was called for Position 4F79-161, which he worked for the next three days. The Organization maintains that Claimant improperly diverted from Position 4F79-358 to Position 4F79-161 on the three dates in question and that he is entitled to be compensated at the time and one-half rate for work performed on Position 4F79-161, rather than the straight time rate that he was paid.

Carrier argues that the vacancy on Position 4F79-358 ceased to exist when it was annulled on the Christmas holidays. Further, it argues that the rate paid Claimant for working Position 4F79-161 was \$30.00 per day higher than the rate of the Office Porter position and that there is no basis under the Agreement for an Extra Board employee to be paid time and one-half for working Position 4F79-161.

Carrier is mistaken when it concludes that the annulment of a position because it is not needed on a holiday terminates the "duration of [the] vacancy," as contemplated by Section II(e) of the Extra Board Agreement. The vacancy existed before the holiday annulment and it existed after the holiday. When a regular assignment is annulled because of a holiday, the occupant is not moved to a different job. He returns to the assignment after the annulment. There is nothing in the Extra Board Agreement that suggests that a different result is contemplated or appropriate in the application of Section II(e). Accordingly, the Agreement was violated when Claimant was returned to the Extra Board while the vacancy in the Office Porter job continued.

On the matter of reparations, Carrier argues that there is no Agreement provision supporting the relief requested. The Office Porter position was assigned hours of 11:00 PM to 7:00 AM. The position Claimant worked on December 26, 27 and 28, 1990, had assigned hours of 8:00 AM to 5:00 PM. On March 27, 1975, the parties entered into a Memorandum of Agreement which provided that:

"Current Agreement Rule 65 deals specifically with the use of regularly assigned employees only in cases of emergency.

In the application thereof, when employees are used on another position outside of their regularly assigned hours, they shall be paid the time and one-half rate."

In other applications, Carrier and Organization have acknowledged that Guaranteed Extra Board employees shall be considered "regularly assigned." Further, the Extra Board Agreement treats the Extra Board employee as a regularly assigned employee when it places the employee in the vacancy for the duration of the vacancy, in this case nearly two full months. Accordingly, when a Guaranteed Extra Board employee, assigned to fill a vacancy for the duration of the vacancy, is used on another position outside the regularly assigned hours of the position he (she) has been assigned to fill, such employee is entitled to be compensated in the same manner as a regularly assigned employee used outside his regularly assigned hours.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.