

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30889
Docket No. CL-31000
95-3-92-3-951

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-10907) that:

The following claim is hereby presented to the Company in
behalf of Claimant Mary Stachura (92-DH011).

I claim eight hours at the time and one half rate for
clerical position 2300-0700 January 3, 1992, for not
being called for position. Incumbent of position, T.
Contro, was marked off. R.L. Barker was called into
work. Mr. Barker did not have note in to be called for
any spare clerical work until January 3, 1992, 2305
hours. Please see attached copy. The call for 2300-
0700 position goes out at 2310. I was home and available
for the call. The Carrier has violated Rule 5, Rule 13
(g) and other rules.

This claim is in compliance with Rule 28-2 of the Clerks'
Agreement."

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.

In this claim, the Organization contends that Carrier violated Rule 5 of the Agreement when Claimant was bypassed because Carrier used a non-available junior employee to fill a vacancy on January 3, 1992. It argues that the junior employee did not advise the Carrier of his desire to be called for extra clerical work until after the violation of January 3, 1992, 11:00 PM tour of duty.

In addition, the Organization maintains that Carrier violated 28-2 of the Agreement when it failed to respond to the claim in a timely manner. In its view, the claim should be allowed on the basis of this 60 day time limit violation.

Carrier argues that it did not violate the Agreement. It asserts that the junior employee had been called for all clerical extra work previous to holding a regular Yardmaster assignment. When he reverted to the clerical extra list, he was still available for this work.

As to the Organization's assertion regarding Rule 28-2, Carrier asserts that the reply to the claim was handled in the customary manner on the property within the time frame provided in the Agreement.

We conclude that Claimant was improperly bypassed to fill a vacancy on January 3, 1992. Therefore, Claimant shall be compensated eight hours at the straight time rate of pay for January 3, 1992.

As to the alleged time limits violation, the evidence indicates that the time limits issue was not raised on the property. While we are not certain that this alone makes the claim defective, it is clear that both parties failed to handle the appeals and denials procedures properly. Clearly, Carrier and the Organization were providing each other with the opportunity to respond beyond the stated time limits. The parties are put on notice that they must adhere to the time limits in the future.

Accordingly, and for the foregoing reasons, the claim is sustained at the pro rata rate.

AWARD

Claim sustained in accordance with the Findings.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 10th day of May 1995.