

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30931
Docket No. CL-31478
95-3-93-3-490

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

(Transportation • Communications
(International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former
(Seaboard Coast Line Railroad)

STATEMENT OF CLAIM: "Claim of the System Committee of
the Organization (GL-10978) that:

1. Carrier violated the Agreement, when on March 3, 1992, it diverted the vacation relief Clerk at the Division Manager's Office at Florence, South Carolina, from his assignment and filled a temporary vacancy (the Janitor's position), Position No. 159, and failed to call the first-out available Guaranteed Extra Board incumbent for this position.
2. Because of the aforementioned violation, the CSX Transportation shall now compensate Extra Board Clerk G. D. Boykin, ID No. 140749, one (1) day's pay at the applicable rate."

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.

The facts are not in dispute. At the time this dispute arose, Claimant was assigned to the Guaranteed Extra Board (GXB) at Florence, South Carolina. On March 3, 1992, the occupant of

Position No. 159 marked off sick. Claimant was first out on the GXB, rested, available and qualified to protect the vacancy on Position No. 159. Instead of calling Claimant, Carrier diverted a Clerk on a vacation relief training assignment to protect the position in question.

Claimant filed a claim for the time he did not work on March 3, 1992. In its denial of that claim the Carrier acknowledged that Claimant should have been called, but pointed out that Claimant "... worked 4 days and he was paid 1 day guarantee for not working under the Guaranteed Extra Board Agreement for the week of March 2, 1992." Thus, he incurred no monetary loss and was entitled to no relief.

Carrier maintains that awarding a day's pay to Claimant constitutes a penalty payment -- "windfall" compensation. In support of that position, it cites Public Law Board No. 3314, Award 11. In a case similar to the instant matter, that Board found that, where no damages are suffered, no monetary award is appropriate, "... absent a clear showing of a wilful and malicious breach of the contract." In this case, the Organization provided unrefuted evidence that no fewer than eleven identical claims involving unassigned and GXB employees on the Florence, South Carolina, property are currently pending. This Board feels that such evidence meets the standard set forth by the above-mentioned Board -- to wit, "... wilful ... breach of the contract." Accordingly, the instant claim is sustained as presented.

AWARD

Claim sustained.

ORDER

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 8th day of June 1995.