

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31612
Docket No. CL-31099
96-3-93-3-119**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

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

**STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-10923) that:**

- (a) The Carrier violated the Clerks' Rules Agreement effective September 26, 1990, particularly Rule 2, 4, 5, 10, Appendix B and other rules, as well as the past practice of allowing 'hold downs', when on June 26, 1992, they refused to allow Claimant Villeneuve's request to cover short vacancy on position of Crew Dispatcher, tour of duty 0700 to 1500, in place of vacationing employee R. Perry, effective June 29, 1992, for a period of at least five (5) weeks and instead they diverted Clerk F. VanDenburg from his position on a daily basis to fill the vacation vacancy and blanked his regular assignment.**
- (b) Claimant Villeneuve should now be allowed eight (8) hours punitive pay, based on the pro rata hourly rate of \$13.84 commencing June 29, 1992 and continuing for the duration of the vacancy involved, on account of this violation.**
- (c) Claimant was qualified, ready and willing to cover this assignment had the Carrier granted his request to do so.**
- (d) This claim has been presented in accordance with Rule 28-2 and should be allowed."**

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 June 26, 1992, Claimant wrote to the CATS Assistant Manager requesting a hold-down on the vacancy created when Crew Dispatcher R. Perry began his vacation. Concurrently, junior Clerk DeMicco also made application to hold down Perry's position, due to commence at 7:00 A. M. on June 29, 1992. And finally, Clerk G. Evens applied for the hold-down on Claimant's position had he been granted the hold-down on Perry's job.

Carrier denied the Claimant's request, opting not to provide a relief worker in Perry's absence. Carrier relied upon Appendix B - Annual Vacations- while maintaining that it would not place a "burden" on remaining Crew Dispatcher VanDenburg, nor would it place an undue burden on Perry upon his return from vacation."

The Organization replied to Carrier's denial asserting in its Submission that:

- "1) A burden did fall on remaining employees: VanDenburg was diverted and he and others were required to work overtime in order to absorb duties of both positions.**
- 2) Carrier is prohibited, by Sections 6 and 10 of Appendix B from diverting employees, as it did in this case.**

- 3) Carrier should have granted Claimant's request to fill the temporary vacancy on a hold-down basis, as such requests are normally honored; were the intent of the current agreement and is required under Section 12 (d) of Appendix B."

In further support of its position, the Organization went on to note that between July 7 and 25, 41 hours were worked at time and one-half, and that between July 25 and August 2, 48 hours of overtime were performed.

Carrier's subsequent replies echoed its initial denial, therefore, the dispute is now before this Board for adjudication.

The threshold issue concerns Carrier's decision to blank vacationing employee Perry's position, relying instead on remaining Crew Dispatcher VanDenburg to perform any necessary duties. In order to adhere to the parameters set forth in Appendix B, those remaining duties could not place any additional burden on Vandenburg, nor could those duties constitute more than 25 percent of the workload of that position.

Carrier did not deny the Organization's tally of the overtime worked, and those hours exceed the 25% allowed for by Appendix B of the Agreement. Further, it appears that the Claimant was indeed available to work the available hold-down at issue. Therefore, this claim must be sustained.

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 29th day of August 1996.