

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31767
Docket No. TD-31561
96-3-93-3-553

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

(American Train Dispatchers Department/Brotherhood
(of Locomotive Engineers

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Allow two days pay at overtime rate for Monday 7/1 and Tuesday 7/2 for E1. Available for work and not called. Dispr. B. R. Howard worked off regular assignment, was displaced by regular man Heagy on Friday 6/28 off E4 job, no hold down resubmitted. Rules 4 Section 2 - Rule 5 Section 1(e)."

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 were given due notice of hearing thereon.

The operative facts are undisputed. On the claim dates, July 1 and 2, 1991, Claimant was the regular Train Dispatcher on Desk E, 1st trick (position E-1) with rest days of Monday and Tuesday.

Prior to the claim dates, W. L. Heagy held position E-4. Heagy was, however, selected to work for a time as STO-CTD. Heagy's E-4 position was posted as a temporary assignment and was filled by B. R. Howard in accordance with Rule 4 Section 2 of the Agreement.

On June 28, 1991, Howard was assigned to work a road day to review the territory under his responsibility. As a result, he did not work the E-4 position that day. Rather, the Carrier assigned Heagy to cover the position.

Upon his return from the road day, Howard resumed covering the E-4 position on the claim dates. The Organization and the Claimant, however, allege the temporary assignment was terminated and ceased to exist when Heagy, the regular incumbent, covered the position on June 28. According to the Organization, the claim dates became "extra work" that should have gone to the Claimant on an overtime basis per Rule 5.

The Organization contends that under Rule 4 temporary vacancies can only last until the incumbent returns to his position. The Carrier, to the contrary, says Rule 4 lists only certain circumstances, in Section 2(b) none of which are applicable, that can terminate a temporary assignment. In addition, the Carrier notes that Rule 4 Section 2(a) specifically prevents an absence from work from breaking the continuity of a temporary assignment.

We carefully reviewed the cited provisions of Rule 4 which control temporary assignments. Our review fails to reveal any language that explicitly says temporary vacancies can only last until the return of the regular incumbent, as the Organization contends. Moreover, the provisions of Rule 4 Sections 2(a) and (b) which have been relied upon by the Carrier, do reflect a negotiated intent that temporary vacancies would not terminate prematurely due to happenstance.

In claims of this nature, it is well settled that the Organization has the burden of proving all elements requisite to establishing a valid claim. On this record, the Organization failed to satisfy that burden. Accordingly, the claim must be denied.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of October 1996.