

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31981
Docket No. CL-32418
97-3-95-3-300**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11146) that:

- 1. Carrier violated the Agreement when it denied Clerk M. J. Frawley guarantee day for the week of December 10, 1990.**
- 2. Because of the above violation, Carrier shall now be required to compensate Clerk M. J. Frawley for one (1) days' pay at the appropriate 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 were given due notice of hearing thereon.

Claimant holds a Guaranteed Extra Board position at the Crew Management Center in Jacksonville, Florida. During the week of December 10-16, 1990, Claimant was called from the Extra Board to protect a hold down vacancy on Position 311. Position 311's rest days were Friday and Saturday. Claimant was compensated for Monday through Thursday, December 10-13, 1990. Claimant was called on Saturday, December 15, 1990 for work on another position. Claimant was not home for the call. As a consequence of the missed call, the Carrier deducted eight hours from Claimant's 40 hour guarantee for the week of December 10, 1990. This claim followed.

The March 22, 1988 Agreement establishing the Extra Board at Jacksonville states, in relevant part at Section III(b):

"(b) The following payments will be credited in the computation of the forty (40) straight-time hours guarantee:

1. Where an employee is paid for but does not work on a holiday he will be credited with 8 hours towards the guarantee.
2. Time and one-half paid on holidays, rest days or for doubling will be credited as straight time in computing the guarantee.
3. An extra employee paid for qualifying on an assignment will be credited with 8 hours towards the guarantee.

(c) The following payments to extra board employees will not be credited toward the forty (40) straight-time hours guarantee:

1. Payments made for meal and lodging expenses.
2. Payments made for travel and transportation expenses."

According to the Organization, when Claimant assumed the hold down position during the week of December 10-16, 1990, he was on that position's rest day on

December 15, 1990. Claimant therefore effectively stood in the shoes of the incumbent of that position. The Organization further asserts that it was improper to reduce Claimant's 40 hour guarantee by eight hours for the missed call on the rest day of December 15, 1990 because, under Section III(b)(2), Claimant was not "paid on ... [that] rest day."

The Carrier asserts that Claimant was unavailable on December 15, 1990 and relies upon Section II(f) of the Agreement:

"(f) ... While extra board employees are subject to call at any time, efforts will be made for the calling and placement of extra board employees within the times of 5 A.M. and 8 A.M. (1st shift); 1 P.M. and 4 P.M. (2nd shift) and 9 P.M. and 12 Midnight (3rd shift).

* * *

The Carrier further relies upon Sections IV(b) and (d) of the Agreement:

"(b) An extra board employee must be available for service the full calendar day. If he is off for any reason, 8 hours will be charged against his guarantee for each calendar day or fraction thereof.

* * *

(d) An extra employee who is called and is out of place will be charged 8 hours against his guarantee for the position he would have worked had he been available for the call."

Where an employee assumes a hold down position with that position's rest days, the above language relied upon by the parties becomes unclear. As the Organization argues, a fair interpretation of Section III(b)(2) is that the 40 hour guarantee can be reduced for a rest day only if the employee is paid for that day (e.g., if the employee works overtime on that rest day). Because Claimant was not paid for Position 311's rest day of December 15, 1990, it therefore follows that it was improper under Section III(b)(2) to reduce Claimant's guarantee for the week of December 10, 1990. By the same token, the Carrier's reliance upon Sections IV(b) and (d) support its position.

Under the Carrier's theory, Claimant was obligated to be available for service; he was called and he missed that call, thereby permitting the charging of eight hours against Claimant's 40 hour guarantee.

Under a literal reading of the language relied upon by the parties, both interpretations make sense. If that was all that was present in this record, we would deny the claim because the burden is on the Organization to substantiate all elements of its claim and conflicting interpretations would not satisfy that burden. But, there is more.

On the property, the Organization took the following position:

"... [S]ince the first Guaranteed Extra Board Agreement was placed in effect almost twenty (20) years ago, this is the first dispute involving this particular issue."

The clear import of that statement is that the Carrier had not applied the Rules of the Guaranteed Extra Boards in this fashion in the past to an employee who assumed a hold down position and who missed a call on that position's rest day. The Carrier did not refute that statement—either to show that the provisions have been applied consistent with its position or to state that the circumstance never came up. Any such rebuttal is missing from this record. Under the circumstances of this case, we must therefore find the Organization's unrefuted assertion to amount to establishment of a practice which explains the ambiguous language as it applies to the reduction of the 40 hour guarantee for Guaranteed Extra Board employees who assume hold down positions and who miss calls for work on that position's rest days. Given what is before us in this case, we shall therefore sustain the claim.

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 6th day of May 1997.