

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32137  
Docket No. CL-32969  
97-3-96-3-350**

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

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

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Organization (GL-11227) that:**

- 1. Carrier violated the Agreement on March 18 and 19, 1995, when it failed to call Claimant R. H. Lampe, ID 522615, to protect vacancies but instead called a junior employee.**
- 2. Carrier shall compensate Claimant eight (8) hours' pay at the applicable overtime rate for each of the two (2) violations.”**

**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.**

On March 18 and 19, 1995, the Carrier called employees junior to Claimant to protect vacancies on position 4EAT-100 in the Atlanta Service Team at the Carrier's Customer Service Center. The Carrier states that Claimant was "not called for overtime ... because you were removed from the qualification list by Manager Holt on the Atlanta Service Team ... on 2-15-95 because when you worked this position on 2-12-95 you were not familiar with the numerous changes that had taken place on this position."

Rule 18 states:

**"RULE 18 - USE OF UNASSIGNED OR EXTRA BOARD EMPLOYEES**

(c) When filling short vacancies occasioned by failure of the regularly assigned (not relief) employee to report for duty, the following procedure will be observed, in the order shown:

1. By the use of unassigned employees who have not completed forty (40) hours' work in that week, as provided for in paragraphs (a) and (b) of this rule.

2. By the senior qualified regularly assigned employee, in the immediate office, as established by agreement between the Division Chairman and appropriate Carrier officer, who has filed a written request at least five (5) days prior to the occurrence of the vacancy desired."

There is no evidence in this record that Claimant was not qualified to perform the duties in question. Because of Claimant's seniority, under Rule 18 the Carrier was therefore obligated to call Claimant for the vacancy. The Carrier's failure to do so violated that Rule.

The Carrier was clearly placed on notice by the Organization's May 15, 1995 appeal that it was seeking payment at the overtime rate on Claimant's behalf. By reason of the Carrier's violation of Rule 18, Claimant lost work opportunities which, if Claimant would have been allowed to work, would have resulted in compensation to Claimant at the overtime rate. To make Claimant whole for the Carrier's Rule violation, Claimant must therefore be compensated at that overtime rate.

The Organization's position is therefore sustained (see Third Division Award 32001).

**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 13th day of August 1997.**