

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32166  
Docket No. CL-32647  
97-3-95-3-579**

**The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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-11185) that:**

- 1. Carrier violated the Agreement on July 30, 1994, when it failed to call Claimant Nate Vault, ID 628144, to protect the vacancy on Position No. 200, but instead allowed the third-shift employee to double.**
- 2. Carrier shall compensate Claimant eight (8) hours at the applicable overtime rate for the above violation."**

**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 incident precipitating the instant claim occurred on July 30, 1994, at Carrier's Customer Service Center (CSC), in Jacksonville, Florida. At the CSC facility, the calling of clerical employees is performed by a designated calling position on each shift. There are four employees assigned to those positions, including the relief position. On the date in question, there were two vacancies in these positions and three employees qualified to fill them including Claimant.

Prior to the first shift, Carrier called Claimant and asked him if he was interested in working the overtime. He declined the overtime. It is unrefuted on the record that Claimant had also declined to work overtime on the same two shifts the day before. Carrier did not call Claimant for the second shift vacancy, which was then worked by one of the other qualified employees. On August 1, 1994, Claimant filed a claim in which he alleged that Carrier improperly failed to call him to work Position 200 -- the second shift. The claim was declined and subsequently progressed up to and including the highest Carrier officer authorized to handle such matters.

It is the position of the Organization that Claimant was qualified, rested and available to protect this assignment but, in violation of Rule 18 of the Agreement, was not called. The Carrier asserted that Claimant told the Caller to "see what [one of the other qualified employees] wants to do." Thus, according to the Carrier, it was reasonable for the Caller to assume Claimant was turning down both shifts, as he had the day before.

In sum, Carrier maintains it believed Claimant clearly implied he was rejecting the shifts, while Claimant denies he made the statement attributed to him by Carrier's Caller. As has been noted in many Awards, the appellate nature of this process precludes any attempt by the Board to resolve such "head on" credibility conflicts. (See Third Division Awards 25962, 28790, 28794; Second Division Award 10946.) Because the Organization failed to carry the burden of persuasion, the instant claim is dismissed.

### **AWARD**

**Claim dismissed.**

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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 13th day of August 1997.**