

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32171
Docket No. CL-32683
97-3-95-3-620**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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-11193) that:

- 1. Carrier violated the Agreement on August 28 and September 15, 1994, when it failed to call Claimant G. C. Hamilton, ID 161664, to protect the vacancy on Position Nos. 300 and 303, respectively. Instead of calling Claimant, Carrier elected to call a junior employee.**
- 2. Carrier shall compensate Claimant eight (8) hours at the applicable overtime rate for each of the above-cited dates.”**

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.

This dispute arose at Carrier's Customer Service Operations Center in Jacksonville, Florida. On August 28 and September 15, 1994 Claimant did not receive a call for overtime on Positions 300 and 303, respectively, and the positions were filled by a junior employee. Claimant filed a claim on September 17, 1994 for eight hours overtime for each of the dates. His claim was declined on September 21, 1994. It was subsequently progressed in the usual manner including conference on the property, after which the matter remained unresolved.

The circumstances precipitating the Carrier's alleged failure to assign Claimant on these two dates are dissimilar. On the first date, August 28, 1994, the Caller maintained that he was told by a female that Claimant was not home. The Caller marked the calling record as "NHPW"(not home per woman)and moved on to a junior employee. On September 29, 1994 Claimant's wife submitted a statement that she had not told the Caller that her husband was not at home. On the second date, September 15, 1994, the Caller telephoned Claimant at 9:42 P.M. and received a busy signal. He then re-dialed Claimant's number at 9:43 P.M., again received a busy signal, and then moved on to a more junior employee.

A careful review of the record suggests that the Caller's version of the incident of August 28, 1994 is credible. The statement made by the Claimant's wife that she did not tell the Caller Claimant was not home, submitted more than a month after the event in question and nearly two weeks after the original claim was filed, cannot be viewed as sufficiently probative to outweigh the Carrier's position.

With respect to the second date, however, the issue is rather whether Carrier made a good faith attempt to contact Claimant. For the reasons set forth at length in Third Division Award 32167 we find that Carrier did not. Thus Claimant is entitled to eight hours' pay at the overtime rate for September 15, 1994.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 3

Award No. 32171
Docket No. CL-32683
97-3-95-3-620

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.