

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32172
Docket No. CL-32716
97-3-96-3-18**

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: (
(Illinois Central Railroad**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11195) that:

- 1. Carrier violated the agreement when on Saturday, October 22, 1994, an unassigned day, it failed to call Clerk R. H. Tindall for work on Position No. 355-4, a position he fills during his regular workweek of Sunday through Friday.**
- 2. Carrier shall now compensate Claimant Tindall eight (8) hours' pay at the time and one-half rate of the above position for October 22, 1994.”**

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.

At the time this dispute arose, Claimant was the regular incumbent of Position 355-4, with assigned hours from 3:00 P.M. to 11:00 P.M. and an assigned workweek of Sunday through Friday. On October 22, 1994, Carrier assigned an employee other than Claimant to work an extra job from 3:00 P.M. to 11:00 P.M. to assist Position 215. Claimant was off duty on his rest day and was available to work on that day. He has a seniority date of April 16, 1954. The employee called has regular hours of 7:00 A.M. to 3:00 P.M. His seniority date is August 10, 1953. A claim was filed by Claimant on December 12, 1994. In that claim the Organization alleged that Rule 33(e)- Overtime of the Agreement was violated when Claimant was not offered the opportunity to perform the work in question. Rule 33(e) reads as follows:

“(e) Work on unassigned days-

Where work is required by the company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty hours of work that week; in all other cases by the regular employee.”

In its denial of the claim, the Carrier asserted that a senior employee was called to assist the incumbent of Position 215. It further stated that the position at issue was an extra position and the senior employee was called in accordance with Rule 9(d)(4) of the Agreement. Rule (d) reads as follows:

“Rule 9- Filling Short Vacancies

*** * ***

(d)In filling short vacancies as specified in paragraph (b) above, the following procedure shall be used:

(1) By the senior qualified extra employee who is available at the pro rata rate. An extra employee will not be used for service at points other than his headquarters point, unless he has made written request to be called in line with his seniority for vacancies at other specified locations. An extra employee is considered ‘available’ for one full tour of duty on

each calendar day provided the second tour of duty commences not less than sixteen hours from the previous starting time. An extra employee called for service between sixteen and twenty hours from his last starting time has the privilege of declining such service.

(2) By the senior qualified regular assigned employee in the same office or facility who desires to fill the vacancy. Such employee will not be permitted to begin work on the vacancies on either of the rest days of his regular position. If the vacancy is less than five working days, the employee may return to his regular position at the expiration of the vacancy. If the vacancy is of five or more days duration, the employee must observe the rest days of the vacant position during and at the end of the vacancy. The employee filling the vacancy must remain thereon for the duration unless displaced through the exercise of seniority or assigned to another position by bulletin.

(3) If on a regular relief assignment, by the regular incumbent on the same shift who fills the position five days a week.

(4) The senior available qualified regularly assigned employee off duty.

(5) The senior qualified extra employee available at time and one-half rate."

The claim was subsequently progressed in the usual manner up to and including the highest Carrier officer authorized to handle such matters. Following conference on the property, the issue remained unresolved.

A careful review of the record indicates that the work in question was not associated with Position 355-4, but, rather, was a temporary or extra job. Thus, there was no incumbent to consider. Because there was no one on the Extra Board to call who had not completed his/her workweek, the Carrier correctly called the senior available

qualified regularly assigned employee off duty. The shift upon which the work at issue was performed does not remove the work from the most senior employee to a junior one, solely on the basis that the latter's normal shift coincides with the temporary/extra work at issue.

AWARD

Claim denied.

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.