

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32502
Docket No. CL-32996
98-3-96-3-383

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Illinois Central Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11232) that:

1. Carrier violated the Agreement between the Parties when on July 9, 1995, it failed to call Clerk B. G. Barclay, Centralia, Illinois, to fill a short vacancy on Position No. 1951 thereby violating Rules 9, 33, The Guarantee Extra Board Agreement, and others of the Clerks Agreement.
2. Carrier shall now be required to compensate the Claimant eight hours at the time and one-half rate amounting to \$ 197.74.”

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 Parties are in agreement on the pertinent facts. On Wednesday, July 5, 1995 Clerk E. W. Fizer commenced a scheduled vacation from Position No. 1951 at Centralia, Illinois. That position entailed regular hours of 3:00 P.M. to 11:00 P.M. with Mondays and Tuesdays off. Clerk B. H. Barclay, incumbent of Position No. 7012 on the Guaranteed Extra Board at Centralia, was called to work Fizer's shift on July 5, and worked it again on July 6 and 7. Barclay previously had filled vacancies on Position 1954-4 on July 3 and 4, and thus by Friday evening, July 7, had worked five eight-hour shifts on Positions 1954-4 and 1951.

On Sunday, July 9, Carrier called in Clerk J. W. Cragen from a day of rest to work Fizer's shift. On July 19, the Organization presented a claim for eight hours at time and one-half alleging that Carrier had violated Rule 9, Filling Short Vacancies, when it failed to use Claimant to work Fizer's regular shift on that date in lieu of Cragen. Carrier asserts that the Claimant was not entitled under Rule 9 to fill the vacancy on Position 1951 on July 9. The relevant provisions of Rule 9 are as follows:

"ARTICLE 1X - FILLING SHORT VACANCIES

Rule 9 of the Schedule Agreement is amended to read as follows:

* * *

(b) When short vacancies (including vacation vacancies) occur or a position is vacant pending bulletin, it may be filled or blanked.

(c) If the company elects to fill the position by calling an additional employee, the procedures described in paragraphs (d) or (e) will apply.

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

(i) By the senior qualified extra employee who is available at the pro rata rate. Extra employees will not be used for service at points other than their headquarters points, unless they have made written request to be called in line with their 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.

(ii) By the senior qualified regular assigned employee in the same office or facility who desires to fill the vacancy. Such employees will not be permitted to begin work on the vacancies on either of the rest days of their regular positions. If the vacancy is less than five working days, the employees may return to their regular positions 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 its duration unless displaced through the exercise of seniority or assigned to another position by bulletin.

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

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

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

The Organization maintains in its Submission that Carrier called Clerk Cragen to fill Position 1951 on both Saturday, July 8 and Sunday, July 9, and violated Rules 9 and 33 by doing so. Its original claim, however, is confined to eight hours pay for July 9, and alleges only a Rule 9 violation. Accordingly, because the Board is required to limit its review to matters raised in case handling on the property, we must disregard the inclusion of the July 8 date and the Rule 33 contention as improper expansions of the claim.

The Board finds that Clerk Barclay, having filled Fizer's shift on Wednesday, Thursday and Friday after doing two earlier turns that week on Position 1954-4, had completed his 40 hours for the week from his Extra Board assignment. Because

Claimant Barclay began and ended his workweek by filling positions from the Extra Board, and not by assignment to fill a position for a five day vacation period, Rule 9 (d) (iii) had no application to him on Sunday, July 9 - a day undeniably part of Fizer's regular assignment, not part of a relief assignment. Under the circumstances presented here, Clerk Cragen, the senior available employee regularly assigned to the position and off duty on the disputed date, was properly called on a regular day of rest to fill Position 1951 at the time and one-half rate under Rule 9 (d) (iv).

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 25th day of March 1998.