

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32529
Docket No. CL-32914
98-3-96-3-279

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-11220) that:

1. Carrier violated the Agreement on December 3, 1994, when it failed to call Claimant F. R. Nalley, ID 196907, to fill Position No. 101, but instead Carrier diverted Clerk R. L. Smith to protect the vacancy since no Specialists were available to protect the vacancy.
2. Carrier shall compensate Claimant eight (8) hours' pay at the applicable rate for the above-cited 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.

At issue in this case are Rule 18 and Rule 67 (Addendum No. 3) of the Agreement between the Parties. Those Rules read in pertinent part as follows:

"RULE 18 - USE OF UNASSIGNED OR EXTRA BOARD EMPLOYEES

* * *

(d) When filling short vacancies occasioned by failure of the regularly assigned relief employee to report for duty, the following procedure will be observed, in the order shown:

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

2. By the employee who works the job five (5) days per week, if he desires the work.

* * *

RULE 67 - (Addendum No. 3) Vacations

* * *

(b) Where work of vacationing employees is distributed among two (2) or more employees such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five (25) percent of the work load of a given vacationing employee can be distributed among fellow employees without hiring a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

On the date in question, the incumbent of Position No. 4ELO-101, Customer Service Representative, was observing a day of vacation. Carrier opted not to fill the vacancy, but to distribute the absent employee's work among other employees. The

Organization filed a claim on December 5, 1994 in which it maintained that Claimant should have been called at the overtime rate to fill the vacancy on Position No. 4ELO-101.

For reasons not clear on this record, throughout the processing on the property, the Carrier never disputed the Organization's claim that more than 25% of the vacationing employee's work had been distributed among the remaining employees. Although Carrier belatedly alleged in its Submission to the Board that less than 25% of the work at issue was distributed, nowhere in the on-property correspondence did it refute the Organization's position. Thus, the Board has no choice but to find the Carrier in violation of the Rules cited.

Accordingly, the instant claim is sustained. There is no evidence that Claimant is entitled to other than the straight time rate, however, for the eight hours claimed.

AWARD

Claim sustained in accordance with the Findings.

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 25th day of March 1998.