

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32609
Docket No. CL-32995
98-3-96-3-382**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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-11231) that:

1. Carrier violated the Agreement between the Parties when on July 8, 1995, they 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 claim herein is on behalf of Clerk B. H. Barclay over the following facts. Claimant worked the Guaranteed Extra Board and was assigned to fill a short vacancy on Position No. 1951. Claimant had worked the position during the week. However, on Saturday, July 8, 1995, the Guaranteed Extra Board was exhausted and Position No. 1951 was vacant. The Carrier called Clerk J. W. Cragen off his regular position to fill the vacancy, rather than the Claimant who had been working Position No. 1951.

The Organization argues that the Claimant was entitled to work Position No. 1951 at the time and one-half rate on Saturday, July 8, 1995. It maintains that as the Claimant was the regularly assigned employee, the Agreement gives him first right to the position, rather than Clerk Cragen. The Organization argues that the Carrier violated Rule 9 (Filling Short Vacancies) when it chose to bypass Rule 9(d)3 requiring the Carrier to select "the regular incumbent on the same shift who fills the position five days a week" and went to Rule 9(d)4 in calling "the senior available qualified regularly assigned employee off duty." The Organization asserts that Carrier's action of calling the senior employee (Clerk Cragen) was a violation under the Agreement.

The Carrier maintains that the Claimant had worked his 40 hours and was not the proper Clerk to fill the position. It further argues that Position No. 1951 did not have rest days of Saturday and Sunday as the Organization alleged. The Carrier noted that the assignment was 3:00 P.M. to 11:00 P.M. with Monday and Tuesday as rest days. Therefore, as the Saturday date did not fall on either rest day, Rule 9(d)3 had not been violated. Accordingly, the proper Rule was followed in selecting Clerk Cragen.

The Board carefully reviewed the facts and record at bar. We find no rebuttal to the Carrier's argument that Saturday did not fall on either rest day of the position. We find no persuasive evidence presented by the Organization to prove that the Carrier's actions violated the Agreement. The Board concludes that the Carrier properly assigned Clerk Cragen to the position and that in the facts and circumstances of this claim the Organization failed in its burden of proof. The Board finds the reasoning and decision set forth in Third Division Award 32502 on point with these circumstances. We therefore must deny the claim.

AWARD

Claim denied.

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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 22nd day of May 1998.