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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32873
Docket No. CL-33579
98-3-97-3-15**

The Third Division consisted of the regular members and in addition Referee John B. LaRocco 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-11674) that:

1. Carrier violated the Agreement on December 12, 13, 14 and 15, 1995, when it called junior employee J. W. Rawls off scheduled vacation to perform service for the Carrier instead of calling Claimant, H. E. Brannen, ID 138658, who was the senior available employee.
2. Carrier shall compensate Claimant eight (8) hours' pay at the applicable overtime rate for each of the four (4) claims.”

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.

On December 12, 13, 14 and 15, 1995, the Carrier called Clerk Rawls from his vacation to perform service at the Carrier's Waycross, Georgia, Materials Department. Relying on Rule 18(d), Claimant, who is senior to Clerk Rawls, filed claims contending that the Carrier should have called him on the four dates in question. Rule 18(d) reads:

"(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.

3. By the senior qualified available regularly assigned employee, in the immediate office, as established by agreement between Division Chairman and appropriate Carrier officer, who has filed a written request at least five (5) days prior to the occurrence of the vacancy desired."

The Carrier compensated Clerk Rawls at the penalty rate as required by the National Vacation Agreement. The Carrier therefore contends that it is not liable for any other penalty payment arising out of its decision to call Clerk Rawls.

While the payroll and work records are not entirely clear, it appears as though the Carrier called Clerk Rawls on one day to train on the duties of the Chief Clerk position because the Carrier anticipated an impending vacancy on that position. Claimant was not qualified to perform this service. However, on the other three dates, there is no definitive evidence that Clerk Rawls continued to train in the Chief Clerk position albeit local supervision asserted that Clerk Rawls' activities were restricted to training. Rather, the payroll records indicated that he filled Positions 201 and 254. Also, Claimant was unavailable to be called to work on December 15, 1995 because he was on personal leave.

In summary, the Carrier should have called Claimant on two of the four days. Paying Clerk Rawls under the National Vacation Agreement did not relieve the Carrier

of continuing to comply with applicable Rules in the parties' Agreement. The Carrier's failure to call a senior qualified available employee on two days was a violation of Rule 18(d) which is a provision separate and distinct from the terms of the National Vacation Agreement.

Therefore, the Carrier shall compensate Claimant for 16 hours at the overtime rate of pay for breaching Rule 18(d). [See Third Division Award 21508.]

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 21st day of October 1998.