

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33147
Docket No. CL-31162
99-3-93-3-71**

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Delaware & Hudson Railway Company, Inc.)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-10924) that:

(a) The Carrier violated the Clerk’s Rules Agreement effective September 24, 1990, particularly Rule 5 and other rules when it failed to compensate Claimant B. M. Crowley at the overtime rate of pay for Billers D. Rabideau when he/she covered position Extra Biller, Symbol Extra tour of duty 1600-2400 March 10, 1992, location Clifton Park, New York, which was his/her second tour of duty in a twenty-four hour period.

(b) Claimant worked rest day tour on March 10, 1992, and then worked 23:59 tour on March 10, 1992.

(c) Claimant B. M. Crowley should now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.64 for eight hours March 10, 1992, less the straight time pay the Carrier has already allowed, on account of this violation.

(d) This claim has been presented in accordance with Rule 28-2 and should be allowed.”

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 B. M. Crowley was the incumbent of a Customer Service Clerk position at Clifton Park, New York, hours 3:00 P.M.-11:00 P.M., with Tuesday and Wednesday as assigned rest days. On March 10, 1992, the Claimant's assigned rest day, she attended a work-related defensive driving course from 7:00 A.M. to 11:00 A.M., for which she was paid four hours pro rata. So far as the record shows, the Claimant remained available for call the rest of that day and eventually was called to work, commencing at 11:59 P.M., when the incumbent of Customer Service Position No. 35 marked off sick. The Claimant was paid eight hours overtime for that call.

While the Claimant was in the defensive driving course, D. Rabideau, a furloughed employee available under Rule 13 for "spare and unassigned work," had been called to fill a position at 8:00 A.M. after the incumbent of the Extra Biller position, S. McIntyre, was unavailable. Rule 13 - REDUCTION AND INCREASE IN FORCES states, in pertinent part, as follows:

- "(g) An employee furloughed in accordance with this Rule and desiring to be called for spare and unassigned work must inform the appropriate officer designated by the Carrier, in writing. A furloughed employee may withdraw his written notice of willingness to perform such work at any time before being called for such service by giving written notice to that effect to the appropriate officer designated by the Carrier.

* * *

- (i) Furloughed employees shall be subject to recall in seniority order."

After Clerk Rabideau had completed the first shift, Carrier "held her over" for an additional eight hour tour of duty, performing the duties of Extra Biller from 4:00 P.M. to Midnight. Rabideau, who is junior to the Claimant, received the overtime rate for working this second tour of duty in a 24 hour period.

On March 23, 1992, the Organization submitted a claim alleging that the Carrier had violated the Claimant's rights under Rule 5 and other Rules of the Agreement when the junior employee was held over to cover the position of Extra Biller in lieu of calling the Claimant. According to the Organization, the Claimant should be compensated eight hours "at the punitive rate based on the pro-rata hourly rate of \$13.64 for eight (8) hours March 10, 1992, less the straight time pay the Carrier has already allowed." The Carrier responded that because Rabideau had not finished all of the work of the Extra Biller position by the conclusion of the first shift on March 10, 1992, she was requested, as the incumbent, to remain at work to complete the work of her position. The Carrier conceded, however, that it did not foresee that completion of said billing work would require another full eight hours.

The Claimant and the Organization cite Rule 5 - OVERTIME in support of the claim. Close examination of the contract language shows that Rule 5(g) governs proper disposition of this claim. Specifically, we find that Clerk Rabideau, as the incumbent of the Extra Biller position on March 10, 1992, was properly offered the overtime opportunity pursuant to Rule 5(g) which reads as follows:

"Except as provided by paragraph (f) above and when it will not interfere with the operation, the employee whose regular duties are to be performed on call or overtime shall have preference to such work. If that employee is not available, the overtime work shall then be offered to qualified available employees, in seniority order, at that location."

AWARD

Claim denied.

Form 1
Page 4

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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 25th day of March 1999.