

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33261
Docket No. CL-33762
99-3-97-3-200**

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

PARTIES TO DISPUTE: (**(Transportation Communications International Union**
(Burlington Northern Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11716) that:

1. Carrier violated the Schedule Agreement, effective December 1, 1980, at Fort Worth, Texas, when on each date of July 10, 17, 24, 31, and August 3, 4, 10, 17, 1995, it was necessary for work to be performed which is normally performed by the incumbent of Mail Clerk Position 011 during the regularly assigned Tuesday through Saturday work week and Carrier failed or refused to call the incumbent of Position 011 from the unassigned day of the assignment and, instead allowed or required employees who do not normally perform that work during their assigned work week to perform the work. In addition, Carrier required other on duty employees to work overtime after their assigned hours performing work normally performed by Claimant.

2. Carrier shall now be required to compensate Claimant at the time and one-half rate of pay (\$170.61) for each of the claimed dates.”

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 all times material to the claim in this case Claimant occupied the position of Mail Clerk No. 011 in the Carrier's Network Services Department at the Carrier's corporate headquarters in Fort Worth, Texas. Claimant, along with three other Clerks, worked in the mail room. At one time each of the Mail Clerk positions worked Monday through Friday with Saturday and Sunday as rest days. However, shortly before the claim dates Mail Clerk Position No. 011 was assigned to work Tuesday through Saturday with Sunday and Monday as rest days.

The Carrier also employs three File Clerks in the Network Services Department. Normally they work in the mail room. However, on the claim dates in July 1995, each of which was a Monday when Claimant was not working, the three on-duty Mail Clerks experienced a large volume of work, and the Carrier utilized the three File Clerks to perform some of that work. On each July claim date the File Clerks worked for approximately one hour, and the on-duty Mail Clerks worked approximately one to one and one-half hours overtime performing that work.

The claim in this case followed.

The Carrier denied the claim. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

The Organization bases the claim on Rule 36F of the applicable schedule Agreement which provides:

"F. WORK ON UNASSIGNED DAYS. Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week, in all other cases by the regular employee."

This Board believes that the Organization's reliance on Rule 36F is misplaced. As the Carrier points out, application of the Rule is conditioned upon performance of work "... on a day which is not part of any assignment. ..." In this case the July claim dates were part of the assignments of the three other Mail Clerks working on those dates.

The Carrier emphasizes that the August claim dates were not Sundays or Mondays, but were dates on which Claimant worked. Accordingly, those dates are not properly claimable.

The Board has carefully reviewed the arbitral authorities cited by both parties to this dispute. Those relied upon by the Organization which deal with the applicability of Rule 36F or Rules containing identical or similar language all involved work on a day that was not part of any assignment. Accordingly, they are distinguishable from the instant case, and we do not find them persuasive.

In view of the foregoing we must conclude that the claim in this case is without Agreement support and thus without merit.

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 6th day of May 1999.