

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33263
Docket No. CL-33833
99-3-97-3-351

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11743) that:

I (Pat Federico) claim one day's pay for not being called on Bruce McManus' job. I am the senior most qualified clerk for October 6, 1995.

Claim is further made that Carrier did not timely respond to the claim following conference at the final on the property level in accordance with Rule 28-2.”

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 October 6, 1995 there was a vacancy on Train Clerk Position No. 80, 0700-1500, at the Carrier's facility in Clifton Park, New York. Claimant was the senior

qualified employee. However, on that date Claimant worked his regular position at Saratoga, New York. His tour of duty ended at 0700. The Carrier did not call him for the Clifton Park position on the basis he was not available and 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. The dispute remains unresolved, and it is before the Board for final and binding determination.

At the outset the Organization argues that the Carrier violated Rule 28-2 of the applicable schedule Agreement governing the processing of claims. The facts indicate that the Carrier made a final declination within 60 days of its receipt of the appeal. The parties subsequently conferenced the matter. The Carrier correctly notes that Rule 28-2 does not require it to issue another declination within 60 days after the claims conference in those instances when it has already declined the claim. Accordingly, the Organization's argument is without merit.

We also believe the Carrier must prevail with respect to the merits. The tour of duty of Claimant's regular position in Saratoga did not end until 0700 on the claim date, the starting time of Position No. 80 at the Carrier's facility in Clifton Park, New York. There was not sufficient time for Claimant to complete the tour of duty on the Saratoga position and to report for the beginning of the tour of duty on Position No. 80. As the Carrier logically argues, an employee cannot be in two places at the same time. While the Organization alleges a past practice that would support its position in this case, the Carrier's point is well taken that the record does not substantiate such practice.

In view of the foregoing we must conclude that the claim has no merit.

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 6th day of May 1999.