

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 33265  
Docket No. CL-33870  
99-3-97-3-393

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  
(CSX Transportation, Inc. (former Seaboard Coast  
( Line Railroad Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-11762) that:

1. Carrier violated the Agreement on April 1 and 2, 1996, when it failed to make a bona fide attempt to call Claimant L. L. Allore, ID 604639, to protect a vacancy.
2. As a result of the above violation, Carrier shall compensation Claimant eight (8) hours at the applicable overtime rate for the two above-cited 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 April 1, 1996 a Crew Caller telephoned Claimant for a vacancy in the Carrier's Customer Service Center in Jacksonville, Florida. Claimant did not answer the telephone, and the Caller left a message on Claimant's answering machine that he was being called for the job. Claimant did not respond, and another employee was called to fill the vacancy. On April 2, 1996 the Carrier again called Claimant for a vacancy in the Customer Service Center. Again Claimant did not answer, and the Caller left a message on Claimant's answering machine that he was being called for the position. Again Claimant did not respond, and another employee was called for the job. On neither date did the Carrier place more than one call to Claimant or his answering machine. 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 who denied the appeal. The dispute remains unresolved, and it is before the Board for final and binding determination.

In support of the claim the Organization cites Third Division Award 31974 on this property and between the same parties holding that the Carrier's crew calling procedures in effect in Jacksonville require that when an answering machine does not identify itself as the number telephoned, a second call must be placed to the telephone number before the Crew Caller contacts the next employee on the call sheet. In this case the record substantiates that Claimant's answering machine did not identify the telephone number reached and that a second call was not made by the Crew Caller on either claim date.

The Carrier argues that Claimant was screening his calls on the claim dates and that he was playing games with the Carrier, deliberately attempting to profit from a Carrier mistake. To grant the claim in this case under such circumstances, the Carrier urges, would be inequitable.

Whatever may be said of Claimant's motivation in this case, which we do not find substantiated in the record, the conclusion is inescapable that the Carrier did not follow the applicable crew calling procedures. On each of the claim dates the Crew Caller was required to make a second call in an attempt to reach Claimant before moving to the next employee on the call sheet to fill the vacancy. The Caller failed to do so. It follows that the Carrier violated the applicable Agreement as alleged in paragraph 1 of the claim.

In support of the relief sought in paragraph 2 of the claim the Organization cites Third Division Awards 21508 and 31579 both on this property and between the same parties. Those Awards stand for the proposition that where a Claimant has lost a work opportunity that would have paid time and one-half, the appropriate make whole remedy is to award such payment. The record substantiates that the vacancies for which Claimant was called on the claim dates would have paid the time and one-half rate. Paragraph 2 of the claim seeks no more than to make Claimant whole for the loss he suffered as a result of the Carrier's wrongful action. Accordingly, the relief sought will be granted.

**AWARD**

**Claim sustained.**

**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 6th day of May 1999.**