

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33267
Docket No. CL-33881
99-3-97-3-394

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 Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11764) that:

1. Carrier violated the Agreement when it denied Clerk R. M. Beals, who had the proper amount of rest, the opportunity to protect Position No. 305 on September 3, 1991.
2. As a result of its action, Carrier shall compensate Clerk Beals eight (8) hours' pay at the rate of Position No. 305.”

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 September 3, 1991 the incumbent of Position No. 305, which was covered by the Nashville Guaranteed Extra Board, marked off for vacation. Claimant was the senior qualified Extra Board employee with 16 hours rest. The Carrier called a junior Extra Board employee with no rest who filled Position No. 305 at the overtime rate. 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.

The Organization bases the claim upon Rule 15(d) of the applicable schedule Agreement as well as provisions of the Guaranteed Extra Board Agreement. The Organization maintains that the Carrier's action violated Claimant's seniority rights as guaranteed by those Agreement provisions.

The Carrier emphasizes that Claimant had been called to fill a vacation absence that was scheduled from September 2 through September 8, 1991. Had the Carrier called Claimant on September 3 to fill Position No. 305 he would have been precluded by the Hours of Service Act from working the vacation absence on September 4. Under the provisions of the Guaranteed Extra Board Agreement, urges the Carrier, Claimant was obligated to work the vacation absence which therefore precluded the Carrier from calling him to fill Position No. 305. The Carrier also argues that the claim is identical to one denied by Third Division Award 29169 on this property, between the same parties and involving the same Agreement provisions at issue in this case. Accordingly, the Carrier contends, the principles of res judicata should bar the claim herein.

Whether the Carrier is correct as a matter of law with respect to its argument as to res judicata, we find Award 29169 dispositive of the claim. In that Award the Board found the following language of the Guaranteed Extra Board Agreement controlling:

"An extra board employee called to fill a vacancy will remain thereon for the duration of such vacancy unless displaced in accordance with agreement rules except he shall be released after completing five (5) shifts in his work week beginning with Monday and will be returned to and marked up on the extra board for the following Monday."

In the instant case Claimant had begun working the vacation absence on September 2, 1991. He was obligated to continue working that position for five shifts in his workweek. September 4 would have been included in those five shifts. Accordingly, the Carrier was not obligated to call Claimant for Position No. 305 on September 3 because to do so would have made him ineligible under the Hours of Service Act to work the vacation absence on September 4.

In view of the foregoing the claim in this case has no 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.