

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33348
Docket No. CL-33923
99-3-97-3-417

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Burlington Northern Santa Fe Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Transportation Communications Union (GL 11773) that:

1. Carrier violated the Schedule Agreement effective December 1, 1980, at Springfield, Missouri, when it failed to timely call clerical employee L. J. Johnson to fill a vacancy at the overtime rate of pay on May 29, 1995.
2. Carrier shall now be required to compensate L. J. Johnson an additional eight hours (8) compensation at the rate of time and one-half the pro rata rate of Yard Clerk Position 005.”

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.

The facts at bar are not disputed. On Memorial Day, 1995 there was a known vacancy on Relief position assigned to protect an 11:30 P.M. position in the Springfield Yard Office. The Claimant was the senior employee, available and desiring the position. The Claimant was called to work the position at 11:29 P.M. and at 11:31 P.M., but assuming a senior employee had accepted what was a known vacancy, left his home at 11:15 P.M. The record indicates that subsequently, the Carrier called a junior employee to work the overtime.

The Organization alleges violation of the Letter of Understanding No. 32 in the filling of the holiday vacancy. It argues that the intent of the Agreement is to require the Carrier to call employees at least two hours prior to the start up of the position. The Organization asserts that the Carrier failed to live up to its obligations in these instant circumstances where calls to the Claimant occurred one minute prior and one minute subsequent to the required starting time. It requests an additional eight hours pay at the time and one-half rate for missing a call.

The Carrier does not deny that the call to the Claimant was made late. It states that the late call was due to a very heavy workload and that the "vacancy was overlooked by [the] Lead Clerk." However, the Carrier rests its denial on the language of the Agreement. It attaches statements on practice and argues that no violation of the Agreement occurred.

The Board has carefully reviewed the facts and positions at bar. Central to our decision is Side Letter No. 32 which states:

"Unless notified before quitting time of the last shift worked, an employee required to perform overtime work not continuous with regular hours may be called as far in advance of time to report as is practicable, but will not be considered unavailable for service until failure to reach him two hours in advance of time required to report. Except in emergency, at least two calls will be made before considering employee unavailable."

The language before us does not require the Carrier to call the Claimant at least two times "within the two hour period in advance of the starting time of the assignment." This is simply not what the language negotiated between the parties states. This Board is not empowered to adjust language for purposes of equity or to overcome a Crew Caller error in calling a minute before and after the starting time of the assignment. We

are empowered to interpret the language written into the Agreement. Applied to these facts, where no emergency is asserted, the Claimant was called twice within two hours of the time required to report and was not available. The claim must therefore be denied.

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 23rd day of June 1999.