

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33834
Docket No. CL-33254
99-3-96-3-722**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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-11454) that:

1. Carrier violated the Agreement on Thursday, July 13, 1995, when it held Clerk C. N. McKee, ID 624292, off regular assigned Position No. 102, on duty at 0700 hours, to work assignment No. 200, on duty at 1500 hours.
2. Carrier shall now be required to pay Claimant eight (8) hours at the pro-rata rate.”

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 July 13, 1995, Claimant was assigned to work his regular position (starting time 7:00 A.M.) at the Carrier's Beaver Street Tower in Jacksonville, Florida. The Carrier held Claimant off his assigned position and directed Claimant to protect another position (starting time 3:00 P.M.) that became vacant as a result of the incumbent's marking off to take medical tests. The incumbent marked off for July 13 on July 10, 1995. All positions at Beaver Street Tower are covered by Hours of Service Act requirements. Claimant was paid time and one-half for working the vacant position. In this claim, the Organization seeks payment for Claimant for eight hours because, due to Hours of Service Act requirements, he was unable to work his regular position.

First, contrary to the position of the Carrier, we do not find that the Organization changed its claim. The thrust of the Organization's position throughout has been that Claimant was not permitted to work his regular assignment and should be compensated.

Second, Rule 65 provides:

"Regularly assigned employees will not be required to perform relief work except in cases of emergency and when required to perform relief work, and in consequence thereof suffer a reduction in regular compensation, shall be paid an amount sufficient to reimburse them for such loss. If any such employee would receive time and one-half rate through the application of Rule 20, on any day such work is performed the time and one-half rate shall apply on that day or days."

The record does not indicate any conditions existed on July 13, 1995 that constituted an emergency under Rule 65. The Carrier was aware of the vacancy for July 13 on July 10, 1995 when the incumbent of the 3:00 P.M. position marked off. Under the circumstances, Claimant is therefore entitled to compensation for not being allowed to work his regular assignment. See Third Division Award 27936 and Awards cited therein ("It appears that most recent Awards (see Third Division Awards 22393, 24071, 24921) have decided that when Claimants are used by the Carrier to cover assignments that put them in conflict with the Hours of Service Law, they should be paid for not being allowed to work a regular assignment.").

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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 21st day of December 1999.