

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33947
Docket No. CL-33941
00-3-97-3-466**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich 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 TCU (GL-11791) that:

- (1) Carrier violated the Agreement, specifically the National Vacation Agreement, when it worked M.W. Daugherty, Production Report Clerk, Position No. 143, during her regularly scheduled vacation, paying her eight (8) hours at the time and one-half rate for each day in addition to vacation pay.**
- (2) Carrier shall now compensate Claimant D.M. Kinnett, the Senior Available Employee who should have been called for the vacancy, for eight (8) hours at the time and one-half rate for each and every day it improperly filled this vacancy (December 1, 4, 5, 6, 7, 8, 11, 12, 15, 19 & 21, 1995).”**

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.

At all material times herein Production Clerk M. W. Daugherty was assigned to Position No. 143 with duty hours between 3:00 P.M. and 11:00 P.M., Monday through Friday. On December 1, 4, 5, 6, 7, 8, 11, 12, 15, 19 and 21, 1995, the Carrier assigned her to work that position, during times at which she would have been on vacation. She was paid eight hours at the time and one-half rate for those days as well as her vacation pay. The Claimant herein, who is more senior than Production Clerk Daugherty, then contested the assignment asserting that the Carrier violated the parties' Agreement when it did not assign him as the senior, qualified, and available employee.

The Carrier first argues that the claim must be dismissed because it is procedurally defective, asserting that the claim was not filed at the local level as provided in the Agreement and/or that the Organization did not appeal the Carrier's declination of the claim. We find no merit in either of these contentions. First, the record reveals that the Organization attempted on approximately five different occasions, one of which occurred before the instant claim was filed, to ascertain the identity of the local authorized Officer with whom claims should be filed. However, its efforts to do so were unsuccessful until after the claim was filed. With regard to the second procedural issue, we find that the Organization filed a timely claim on May 3, 1996, as evidenced by the fact that the Carrier assigned a file number to the claim and conducted a conference on the claim on August 7, 1996, none of which would have been possible if it did not receive the claims as alleged. We therefore find that the claim is properly before the Board.

On the merits, the claim calls into question Rule 18(d) of the parties' National Vacation Agreement as subsequently interpreted. Rule 18(d) sets forth the order by which the Carrier is to assign employees to fill short vacancies. More specifically, that order is first, to use unassigned employees who have not completed 40 hours in the week during which the vacancy has occurred, followed by the employee who ordinarily works the position in question and then, lastly by the senior qualified available employee. On this point the Carrier argues that the Claimant was neither qualified nor available for the assignment and, therefore, assigning the work in question to Production Clerk Daugherty did not violate Rule 18(d). However, a close review of the record developed on the property shows that this argument was first made at the claims conference and was not set forth in the Carrier's letter of declination. Thus, the argument is not properly before the Board and we do not take it under consideration.

Alternatively, the Carrier argues that the parties' National Vacation Agreement has been interpreted by another Referee who awarded the language in question to permit the Carrier to keep an employee at work instead of taking a vacation if it decides, in good faith, that the requirements of the service require such action. On this point the Carrier argued that it was necessary to assign Production Clerk Daugherty, the employee who ordinarily performs the work in question, to work during what would have been her vacation in order to ensure that the data that she would input would be error-free. Moreover, it appears that the work in question not only required accuracy, but was also time-sensitive. Therefore, we conclude that the requirements of the service demanded the assignment of Production Clerk Daugherty instead of the Claimant.

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 22nd day of February, 2000.