

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34209
Docket No. CL-35432
00-3-99-3-338**

The Third Division consisted of the regular members and in addition Referee John B. LaRocco 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-12346) that:

- 1. Carrier violated the Agreement on July 19, 1998, when it failed or refused to call S. R. Sims, ID No. 161588, Customer Service Representative, for vacant position No. 4ETN-114 and allowed a junior employee to protect the vacant position.**
- 2. Carrier shall now be required to compensate Claimant Sims, ID No. 161588, the applicable punitive rate of position 4ETN-114 for the aforementioned violation.”**

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 or about July 19, 1998 the Organization initiated a claim alleging that the Carrier failed to call the Claimant, a Customer Service Representative, for a vacancy in the Jacksonville, Florida, Customer Service Center.

The record reflects that on July 19, 1998 a vacancy arose on Position 4ETN-114 with scheduled hours 7:00 A.M. to 3:00 P.M. The Claimant contends that he was rested and available to work the position and seeks eight hours pay at the overtime rate.

The Carrier's telephone records indicate that two calls were placed to the Claimant's residence just 41 seconds apart about an hour and one-half before the scheduled start time of the assignment. Each call lasted less than 30 seconds. In his July 26, 1998 statement, the Crew Caller attested that a woman answered the first call. The Crew Caller asked the woman if the Claimant desired to work and the woman responded, "Who - No" and hung up. The Crew Caller further related that when he called the Claimant's residence in the past, either he spoke directly to the Claimant or he overheard the person answering the telephone ask the Claimant if he wished to work. The woman's response caused the Crew Caller to wonder if he reached the wrong number. So, he immediately called the number again. According to the Crew Caller, the busy signal confirmed that he had called the correct number. The Crew Caller continued down the overtime list and eventually contacted an employee who was given the overtime assignment.

While the initial claim clearly evinces the Claimant's contention that he did not receive any call, the parties apparently discussed the two successive calls to the Claimant's residence during the handling of the claim on the property. At this point, the Organization alleged that the Carrier did not wait five minutes between calls. (The Carrier's calling instructions suggest a five minute interlude before making a second try upon receiving a busy signal or no answer before the Crew Caller can bypass the employee and go to the next person on the list). The Organization also alleges that there was no reason for the second call unless the Crew Caller had received a busy signal on the first call. Put differently, the Organization contends that if the Crew Caller had already received a negative response, he would not have a valid reason for calling the Claimant's residence again.

In this case the Organization did not come forward with sufficient evidence to refute the rendition given by the Crew Caller in his July 26, 1998 statement. Indeed, the Organization first suggested that no call occurred, but then later conceded that two calls

were made. The Organization then contended that the Carrier did not exert good faith efforts to contact the Claimant because it did not wait five minutes between calls.

Once the Organization acknowledged that calls were made, then the burden was on it to refute the assertions set forth in the Crew Caller's statement. The record does not contain any evidence challenging the accuracy of the Crew Caller's version of events. While the Organization speculates that the second call was unnecessary because the Crew Caller knew that the Claimant had turned down the work, the Crew Caller plausibly related why he called a second time. The woman answering the first call did not follow the routine that occurred when the Crew Caller contacted the Claimant's residence on prior occasions. Normally, the Crew Caller talked to the Claimant directly or he would hear the Claimant being asked if he wanted to work. The abrupt "Who - No" response from the woman was a deviation from the normal routine and thus, the Crew Caller was legitimately concerned about whether he had reached the Claimant's residence. The call back was to confirm that he had called the correct number.

In conclusion, the Organization failed to meet its burden of proof and thus the claim is 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 August, 2000.