

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34211
Docket No. CL-35535
00-3-99-3-443**

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 Baltimore and Ohio
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12403) that:

1. Carrier violated the Agreement on Friday, November 3, 1990, when Carrier failed to properly compensate Claimant D. S. Unger, one (1) day's pay at the pro-rata rate of \$105.93 per day, the rate of Claimant's regularly assigned position, account held off due to Hours of Service Law.
2. Carrier shall compensate Claimant as requested in the above paragraph.”

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 Claimant is regularly assigned to a relief position at Martinsburg, West Virginia, with on duty hours from 7:00 A.M. to 3:00 P.M. Saturday through Wednesday. On Friday, November 2, 1990 (the Claimant's second rest day), the Carrier instructed the Claimant to protect an overtime vacancy on an Operator's position at NA Tower at Martinsburg. Complying with the Carrier's instructions, the Claimant worked from 3:00 P.M. to 11:00 P.M. Because the Claimant filled the Operator's vacancy until 11:00 P.M. on November 2, 1990, the Hours of Service Act prevented the Claimant from working his regularly assigned position which began at 7:00 A.M. the following morning.

The Claimant seeks eight hours of pay for Saturday, November 3, 1990. The Carrier denied the claim asserting that the Claimant was not rested and thus, was unavailable for duty.

Rule 3 of the applicable Agreement provides for a five-day workweek. Rule 26 (a) (6) provides that no regularly assigned employee will fill an overtime vacancy if such utilization of the employee will prevent the employee from working the employee's regular assignment.

In this case, the Carrier's action of compelling the Claimant to work on his second rest day deprived the Claimant of earnings during the succeeding workweek. The Claimant filled the Operator's vacancy for the Carrier's benefit and, as a consequence, the Claimant ran afoul of the Hours of Service Act. Therefore, he must be compensated for the loss of the one workday that he lost out of the five-day workweek. See, Third Division Award 24921.

Accordingly, the Claimant is entitled to eight hours of straight-time pay covering the compensation he lost for Saturday, November 3, 1990 if he has not already been paid.

AWARD

Claim sustained in accordance with the Findings.

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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 23rd day of August, 2000.