

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36019
Docket No. CL-35270
02-3-99-3-158

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 Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12289) that:

1. Carrier violated the Agreement on July 4, 1990, a legal holiday, when, by bulletin dated July 2, 1990, it blanked Claimants R. A. Shrout's and J. L Lee's regularly assigned positions and authorized Messrs. H. W. Rawlings and L. J. Show to perform duties assigned to and normally performed by Claimants during their normal tours of duty.
2. As a result of the above violation, Carrier shall compensate each Claimant one (1) day's pay at the punitive rate of his position.”

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 the relevant time, the Claimants worked in the Materials Department at Cumberland, Maryland.

On July 2, 1990, the Carrier issued a bulletin stating that "No Materials Department employees will work Wednesday, July 4, 1990, Independence Day, except those notified below." The Carrier then listed three employees on the 7:00 A.M. - 3:20 P.M. shift (including Foreman H. W. Rawlings and Truck Operator L. J. Show); and one employee each on the 3:00 P.M. - 11:00 P.M. shift and 11:00 P.M. - 7:00 A.M. shift. The Claimants were not listed for work on the holiday.

The Organization contended that the Claimants perform material distribution functions; Rawlings and Show typically perform receiving functions; on the holiday, Rawlings and Show performed distribution functions of approximately 36 items to shop forces; and the Claimants should have been called to perform that work. The Carrier defended on the ground that, as it had done in the past, it provided holiday coverage as outlined in Rule 4(2)(a) and that the work performed by Rawlings and Show on the holiday was not work that was assigned exclusively to the Claimants' positions, but was work that could be performed by Rawlings and Show in the normal performance of their assignments.

The burden in this case rests with the Organization to demonstrate a violation of the Agreement. The Organization has not carried that burden.

Rule 4(2)(a) provides:

"(2)When overtime is necessary to perform work that is assigned to several positions but not exclusive to any single one, preference will be given in order shown to:

- (a) the incumbents of the positions on which the work is intermingled in seniority order."

The Organization failed to demonstrate that the distribution work performed by Rawlings and Show on the holiday were not functions that Rawlings and Show performed as part of their normal duties. Stated differently, the Organization failed to demonstrate that the work performed on the holiday was work the Claimants performed on an exclusive basis.

At best, the record reveals crucial facts that are in dispute. But the burden is on the Organization. Without the necessary showing that the disputed work was exclusively performed by the Claimants' positions, under Rule 4(2)(a), the Carrier was not obligated to assign the holiday work to the Claimants.

In light of the above, the Carrier's other arguments are moot.

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 21st day of May, 2002.