

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36098
Docket No. CL-36450
02-3-00-3-681**

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 Intermodal Terminals, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12664) that:

The following claim is hereby presented to the Carrier in behalf of Claimant Mr. P. R. Campbell.

- (a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 24(f), or 24(g), 40 and other rules when it failed to call and work Claimant Mr. P. R. Campbell for position of Extra Gate Clerk work, hours 3:00 pm to 5:30 pm, on June 23, 1999, located at the Trail-Van Terminal, Columbus, Ohio, and instead assigned and permitted junior Clerk Mr. E. D. McElroy to work Extra Gate Clerk duties on this date at the punitive rate of pay.**
- (b) Claimant Mr. P. R. Campbell must now be allowed eight (8) hours pay at the appropriate punitive rate of pay for June 23, 1999 on account of this violation.**
- (c) Claimant is qualified was available and should have been worked in accordance with Rules 24 and 40.**
- (d) This claim has been presented in accordance with Rule 45 and must be allowed.”**

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.

Near the end of the first shift on June 23, 1999, the Carrier experienced traffic congestion at the inbound gate of its Trail-Van Terminal at Columbus, Ohio. The Carrier expected the congestion to last for a very short duration. To alleviate the condition, the Carrier held over the Intermodal Service Representative (ISR) regularly assigned to the 7:00 A.M. to 3:00 P.M. shift to work overtime. The ISR worked the inbound gate at the overtime rate from 3:00 P.M. to 5:30 P.M. Evidently, the heavy traffic endured slightly longer than the Carrier had originally estimated.

The regularly assigned ISR on the day shift that the Carrier utilized to perform the two and one-half hours of overtime service was junior to the Claimant, the senior qualified and available extra employee.

In its claim filed on July 9, 1999, the Organization charged that the Carrier was obligated to call the Claimant to perform the work at the inbound gate on June 23, 1999. It further alleged that the Carrier's failure to call the Claimant violated portions of both Rules 24 and 40. The Organization seeks, on behalf of the Claimant, eight hours of pay at the punitive rate.

Contending that nothing in the Agreement precludes the Carrier from holding over the incumbent of a regular assignment to finish pending work, the Carrier denied the claim. The Carrier also alleged that inasmuch as it estimated that the congestion would last for only a short while, it need not call an extra ISR to work a full eight-hour shift.

The Organization alleges that the Carrier violated Rules 24(f) and (g) which provide:

- "(f) Where work is required by the Company to be performed on a day which is not a part of any assignment or when it is necessary to perform work on the rest days of a position which are not part of a regular relief position, and the work is basically the same as that performed during the work week and during the same relative hours, and no qualified extra list employee is available at the straight time rate, the incumbent of the five (5) day position will be offered the work first.**

When an assigned relief employee is absent and it is necessary to perform the work of his assignment, and no qualified extra list employee is available at the straight time rate, the vacancy will first be offered to the incumbent of the position being relieved.

Should the incumbent refuse the work, it will then be offered to the senior, available, qualified regular or extra employee whose position is protected by the extra list involved.

- (g) Regular and extra work assignments not covered by paragraph (f) above will be offered to the senior, qualified, available, regular or extra employee whose position is protected by the extra list involved."**

The Organization also cited Rule 40(d)(4) which reads:

"When no qualified extra list employee on the particular extra list involved is available at the straight time rate of pay, the work will be distributed as provided in paragraphs (f), (g) and (h) of Rule 24."

On the property, the Organization failed to adequately articulate how the Carrier's holding over of the incumbent ISR on June 23, 1999 violated the above quoted Rules. Instead of explaining the intricacies of the alleged contract violation, the Organization averred that two decisions constituted sufficient precedent to presumptively prove a violation of Rules 24 and 40 without the necessity of setting forth a detailed explanation of the violation. Both of these decisions, Public Law Board No. 2945, Award 56 and Special Board of Adjustment No. 1011, Award 27, interpreted language identical to that contained in Rules 24 and 40 which were lifted from the former TCU-Conrail Agreement.

After carefully perusing the record, the Board holds that the Organization failed to meet its burden of proof because not only did it fail to explain exactly how the Carrier breached Rules 24 and 40, but also the decisions on which the Organization relies are distinguishable from the facts herein.

Without an explanation as to how the Agreement is violated, the Board cannot hypothesize the Organization's position. The Organization bears the burden of proving its claim and the Board cannot speculate on exactly how the Rules were allegedly violated. Second Division Award 12861. Moreover, on its face, Rule 24(f) applies to the performance of work "... on the rest days of a position which are not part of a regular relief position. . . ." The day shift ISR performed the overtime work on one of his regularly assigned work days. The Organization did not provide any evidence that the incumbent of any second shift ISR position was on a rest day. Thus, the work was not performed on a rest day.

Next, the two decisions on which the Organization relies are inapplicable to the facts herein. In Award 56 of Public Law Board No. 2945, a computer terminal breakdown during the first shift caused a backlog of work to develop across the entire second shift. The third shift Clerk was called in four hours early to help reduce the backlog during the last four hours of the second shift. Thus, in Award 56, the third shift employee who performed the work was actually performing overflow work that had arisen on the first shift. Therefore, Award 56 properly characterized the work as extra work as opposed to unfinished work, contiguous to the third shift.

In Special Board of Adjustment No. 1011, Award 27, the work in question occurred on Saturday, which was one of the Claimant's rest days and a regular relief position did not exist. While Award 27 is not entirely clear, the Carrier apparently doubled over a junior employee, who was already working an overtime assignment to work another overtime shift. Award 27 ruled that Rule 24(f) applied because the work was performed on a rest day. To reiterate, we found that the Organization did not prove that June 29, 1999 was a rest day for any pertinent employee.

Because the cited precedents do not control the outcome of this case, the Carrier was not under any requirement to call an extra employee to work the two and one-half hours of

overtime on June 23. Moreover, a long line of decisions have held that overtime work that is contiguous to the duties performed by the incumbent during his straight time tour of duty can be assigned to the incumbent. In this case, the incumbent, the first shift ISR, performed work after his regularly assigned shift that was inseparable from the tasks that he performed during his straight time assignment. See Third Division Award 29519. More importantly, the traffic congestion, which necessitated overtime service, arose on the first shift. In Third Division Award 24519, the Board held that absent a Rule to the contrary ". . . it does not appear reasonable to expect the Carrier to remove a properly assigned employee from a day's job, and immediately replace him with another employee, when extra work becomes necessary to complete that very job." Similarly, in Third Division Award 24235, the Board adjudged that absent a Rule precluding the Carrier's action, the Carrier can assign an incumbent to finish work pending near the end of the incumbent's shift. See also Third Division Awards 26386, 26416 and 27090.

In this particular case, the short-lived congestion that developed on June 23, 1999 was work accruing to the incumbent on first shift and the Carrier could hold the incumbent over to finish his usual and customary tasks.

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 July 2002.