

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36275
Docket No. CL-36068
02-3-00-3-219

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12583) that:

This claim is filed on behalf of Mr. Bruce Penttinen, TSR, North Billerica, MA. This claim is for eight hours at the rate of time and one-half plus mileage. The claim is for Saturday, November 28, 1998 when Mr. Penttinen was called to cover vacancy TCMO5 at East Deerfield on his rest day. Mr. Penttinen was called to cover position TCMO7 (Holyoke) starting Monday, November 23, 1998 FURTHER NOTICE at Billerica.

The Carrier violated the Agreement when they used Mr. Penttinen at straight time and did not pay him mileage.

Rules violated are 1, 18, 21, 22, 29 and all other rules of this Agreement support this claim.”

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, who was an other than regularly assigned employee, worked Position TBM07 at North Billerica, Massachusetts, on Monday, November 23, Tuesday, November 24 and Wednesday, November 25, 1998. The Carrier called the Claimant to a vacancy on position TBMO5 at East Deerfield, Massachusetts, which the Claimant filled and worked on Saturday, November 28, 1998. Per Rule 19, the Carrier compensated the Claimant with holiday pay covering November 26 and 27, 1998, which was the Thanksgiving Holiday and the day after Thanksgiving, also a holiday. In this case, the Claimant seeks eight hours at the time and one-half rate plus mileage expenses because the Carrier allegedly called the Claimant to work on his rest day.

The record contains a factual dispute regarding whether the Claimant was called to work a five-day vacancy or a three-day vacancy beginning on November 23, 1998. If the vacancy was for five days, then November 28, 1998 was a rest day for the Claimant and so, he would be entitled to additional compensation. If the vacancy was for three days, the Claimant had only performed active service for 24 hours during the workweek and so, November 28 would not have been a rest day for the Claimant.

The Claimant declared that when the Carrier called him to the North Billerica position, he was told to fill the vacancy until further notice. He further claimed that the Carrier specifically assured him that the assignment would endure for five days. However, the call sheet indicates that the Carrier called the Claimant to fill a three-day vacancy. While the Claimant charges that the call sheet was altered after the call, the Claimant did not present any evidence to buttress his bare assertion. More importantly, the Organization did not raise this argument on the property. Thus, the Board cannot address the allegation that the call sheet does not truly reflect the duration of the vacancy.

The Organization also alleges that the Carrier admitted that the vacancy was for five days or longer because it expressly mentioned a vacancy lasting from November 23 through November 27, 1998 in one sentence of its Submission. However, later in its Submission, the Carrier clarified that it opted to fill the vacancy for just three days. Therefore, the Board does not construe the single sentence in the Carrier's Submission as an admission by the Carrier that the vacancy was for at least five days.

In summary, the Organization did not proffer sufficient proof that the Claimant was called for a five-day vacancy. It logically follows that November 28, 1998 was not a rest day for 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 28th day of October 2002.