

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37769
Docket No. CL-38298
06-3-04-3-215

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-13036) that:

1. Carrier violated the terms of the Agreement, specifically **Rule 18**, on March 3, 2003, when it failed or refused to call the Senior Available Employee, N. W. Taylor, to work Position No. 4ECO-305, in lieu of blanking the assignment and requiring the incumbents assigned to Position Nos. 4ECO-310, 4ECO-311 and 4ECO-316 to perform the work.
2. Carrier shall now be required to compensate Clerk N. W. Taylor; ID#189375, at the rate he would have earned if called properly (\$151.86), at the punitive rate of \$227.78, for the 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.

According to the Organization's initial claim, Position 4ECO-305 covers a seven-day set of duties and consists of a five-day regular assignment having hours from 11:00 P.M. to 7:00 A.M. Wednesday through Sunday. The hours for Monday and Tuesday are part of Relief Position 4ECO-R02. The relief position was advertised on January 2, 2003. There were no bidders so it was declared "no-bid" as well as "open-must fill." These assertions were never refuted on the property.

According to the claim, the relief position was vacant on the claim date, March 3, 2003. The Claimant's name was in the top position on the call list to be called to fill the position on that date. The call list was attached to the claim to show that the Carrier made no calls to fill the vacant relief position that night. Instead, the call sheet shows that the staffing caller was instructed to blank the position as of 8:24 P.M.

The five-page claim went on to assert that instead of being blanked, three other regularly assigned Clerks were directed to perform the duties of the position, which consisted of "inbounding" and "outbounding" trains at some nine locations in Kentucky, Virginia, and West Virginia. The claim provided a detailed description of the work tasks involved in such inbounding and outbounding of trains. It also listed nine specific examples of inbounding and outbounding that the relief position should have accomplished, but which were performed by the other three clerical employees. The claim also estimated that the inbounding tasks varied between 15 minutes to accomplish to more than one hour in some cases. Outbounding was estimated to take between 15 and 45 minutes. Altogether, the claim estimated that three hours and 40 minutes of relief position work was performed by the other three employees. The claim also alleged a violation of Rule 18 in failing to call the Claimant to perform the work. In support of all of its assertions, the Organization attached 56 pages of train records to buttress its contention that the relief position was not blanked because its work was performed by others.

The Carrier's reply to the claim did not refute any of the substantive assertions. Rather, it quibbled about the amount of time each of the nine examples took to be performed. In the eyes of the Carrier official responding, the time spent doing the work of the relief position was only one hour and 18 minutes. In practical effect, the Carrier's response admitted that the work of the relief position was performed by the other three employees, but only contended that it did not take as

long as estimated in the claim. No procedural challenges were raised to the claim, nor was any challenge to the applicability of Rule 18 advanced in the Carrier's reply.

After conference on September 10, 2003, the Carrier contended that the claim was procedurally deficient on the ground that the Organization ". . . failed to provide any documentation to support this alleged violation." The Carrier went on to contend that it had ". . . exhausted the calling procedures for vacant assignments." Finally, the **Carrier** contended that the work that was performed was not an excessive amount of time.

As previously noted, however, the Organization provided 56 pages of train records to support its claim. Moreover, the Organization supplied a copy of the applicable call sheet with the initial claim that clearly showed that no call attempts were made.

Our review of the record shows several fatal flaws in the Carrier's position. First, the Carrier did not raise any procedural objections to the claim until its second response **on the** property. It is well-settled that non-jurisdictional procedural objections must be raised at the first opportunity to do so or they are waived. Such is the case here. Second, it is clear that the position was not blanked. It is undisputed that nine examples of its work were spread over three other employees. If the work of a position is performed, the position is not blanked. See Third Division Award 30265 involving these same parties. Third, it is clear that the Carrier made no attempt to call the Claimant to fill the position. Finally, regardless of how much time the work of the relief position would have taken, the fact remains that the Claimant would have been paid for the entire work shift had he been called to work it.

Given the foregoing circumstances, we must sustain the claim for the full shift at the rate that would have been applicable to the Claimant had he been called for it.

AWARD

Claim sustained.

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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 25th day of April 2006.