

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39666
Docket No. MS-40233
09-3-NRAB-00003-070479
(07-3-479)

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

(J. S. Miles, Jr.

PARTIES TO DISPUTE: (

(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claims Involved

Fourteen claims of 8 hours overtime submitted by me for dates April 30, May 7, 14, 28, June 18, 25, July 2, 9, 16, 23, 30, August 20, September 10 and October 8, 2006, account Carrier erroneously called Savannah, Ga, guaranteed extra board employee B. R. Lively on what should have been one of his two unassigned not-necessarily-consecutive rest days to protect my Sunday “tag” rest day, a day which is not part of any regular relief assignment.

Questions On Which An Award Is Desired

- 1. For all claim dates except October 8, 2006, did the Carrier violate the 60-day time limits stipulations found in Rule 37 of the collective bargaining agreement when it declined my two appeals covering the first thirteen claims?**
- 2. Did Savannah, GA. Guaranteed extra board employee B. R. Lively actually observe his two unassigned not-necessarily-consecutive rest days each workweek of my claims prior to being called to protect my Sunday “tag” rest days?**

3. If Savannah, Ga. Guaranteed extra board employee B. R. Lively is found not to have observed his two unassigned not-necessarily-consecutive rest days during each workweek of my claims, then who was entitled to work my Sunday "tag" rest days, Mr. Lively or me?"

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.

Our review of this voluminous record does not reveal proper support for the Claimant's procedural contention that the Carrier's responses failed to comply with applicable time limits. The record establishes that the Carrier and the Organization have a valid agreement pertaining to the issuance of Carrier responses following conference on the property. The record does not establish that the Carrier failed to comply with the applicable time limit. Therefore, the Claimant's objection must be rejected.

On the merits, the record establishes that Lively was called to work on the days in question pursuant to Rule 18(f) which grants a preference to employees who have not already worked 40 straight time hours in the given week.

Given the foregoing considerations, the record before the Board mandates that the claims must be denied.

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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 April 2009.