

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39891
Docket No. CL-40493
09-3-NRAB-00003-080185

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the TCU (GL-13197) that:

- a) The Carrier violated the TCU/CSX North Clerical Rules Agreement effective June 1, 1999, particularly Rules 24, 40 and other rules, when it failed to call and use Claimant (attached list) for the position of Stevedore, 3PM to 11PM on April 4, 2006, at the Selkirk Auto Terminal, Selkirk, New York. The Carrier held junior Stevedores on duty to perform work that would be designated as ‘unforeseen overtime.’ The Carrier set the amount of work for the day equal to the amount of Stevedores on duty; this left work available for overtime due to the late spotting of the railcars. While attempting to call the overtime list of Stevedores on duty, the carrier did not receive enough positive responses therefore they are obligated to call the available Stevedores at home on their rest day. The Carrier refused to call from home and force assigned the junior employees.
- b) Claimants (attached list) now be allowed five hours twenty minutes punitive pay based on the EMR or WGR whichever is greater for April 4, 2006.
- c) Claimants were qualified and available and should have been called to work this position.

- d) This claim has been presented in accordance with Rule 45 and should 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.

The instant claim arose after the Carrier admittedly forced five Stevedores to work approximately two hours of overtime on the claim date. Beyond that, however, the propriety of the Carrier's action is in sharp dispute.

Despite careful review, we do not find the record herein to present an adequate portrayal of the factual details necessary to support the claim. For example, the claim is for 11 Claimants. There is no explanation for that number when only a maximum of five employees were forced. The claim also seeks five hours and 20 minutes of punitive pay based on EMR or WGR. It is unrefuted in the record that EMR and WGR, whatever they represent, no longer apply. Moreover, the record provides no explanation for the time claimed of five hours and 20 minutes. Finally, although Rule 24 is cited generally in the Statement of Claim, the Organization narrowed the scope and only pursued the claim on the property based on Rule 24(f). Indeed, in the narrative portion of its Submission, the only Agreement provision referenced is Rule 24(f). However, as written, Rule 24(f) only applies to three types of situations, none of which is pertinent to the instant dispute.

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Given the state of the record herein, we must find that the Organization failed to prove a violation of the Agreement as alleged in the claim.

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 31st day of July 2009.