

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 Transportation, Inc.  
(Formerly The Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10443) that:

1. Carrier violated the current Clerical Agreement when it failed and/or refused to compensate Clerk E. L. Griffin one (1) day's guaranteed pay for the week of May 22 through 28, 1989.

2. As a result of the above violation, Carrier shall compensate Clerk E. L. Griffin a guarantee day at the rate of \$104.70."

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 employees 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 waived right of appearance at hearing thereon.

Claimant, who holds a Guaranteed Extra Board position at Pensacola, Florida, seeks one day's guaranteed pay for the week beginning on Monday, May 22, and ending on Sunday, May 28, 1989.

The fourth paragraph of Section I of the Guaranteed Extra Board Agreement effective December 3, 1985 reads:

"Extra board employees' work week shall be Monday through Sunday and rest days need not be consecutive. They shall be guaranteed ten (10) days per half, except that such guarantee shall be reduced by one (1) day's pay for any day on which an employee does not work by reason of his failure to respond to call or is unavailable."

Subsequently, the parties substituted "forty hours per week" for "ten days per half."

During the week in question, Claimant worked on Monday, Friday, Saturday and Sunday. On the three days Claimant did not perform service, he was available, but not called. The Carrier declined to pay Claimant's compensation to bring Claimant up to the forty hours per week guarantee because Claimant did not displace a junior extra board employee, who was working Position 160, on Thursday, May 25, 1989. The Carrier asserts that Claimant had a mandatory obligation to exercise his displacement rights per Schedule Rule 15(i) which provides:

"An extra employee released from prior service who has not completed five (5) shifts within the work week beginning with Monday may, upon twelve (12) hours' advance notice to the proper officer, exercise seniority to any temporary vacancy held by a junior extra board employee, provided he has proper rest."

The specific language in the fourth paragraph of Section I of the Guaranteed Extra Board Agreement effective December 3, 1985 controls over the more general, permissive displacement terminology in Schedule Rule 15(i). The former Rule specifically speaks to reducing the forty hour guarantee. Claimant completely complied with Section I, paragraph 4. He made himself available for service on May 25, 1989. Also, he did not fail to respond to a call, inasmuch as he was not called. There is not any provision in the Guaranteed Extra Board Agreement manifesting the parties' intent that Guaranteed Extra Board employees are compelled to exercise the permissive displacement privilege afforded by Rule 15(i). Quite to the contrary, the first paragraph of Section II(d) of the Guaranteed Extra Board Agreement strongly suggests that the drafters of the Agreement did not intend for Rule 15(i) to be applied to the factual situation in this case. Section II(d) of the Guaranteed Extra Board Agreement states:

"An extra board employee called to fill a vacancy will remain thereon for the duration of such vacancy unless displaced in accordance with agreement rules except he shall be released after completing five shifts in his workweek beginning with Monday and will be returned to and marked up on the extra board for the following Monday."

While the record is unclear concerning whether the junior Guaranteed Extra Board employee was filling a vacancy which continued to endure, their inclusion of this paragraph in the Guaranteed Extra Board Agreement evinces the parties' intent that a senior Guaranteed Extra Board employee need not displace a junior Guaranteed Extra Board employee for the senior employee to maintain his extra board guarantee.

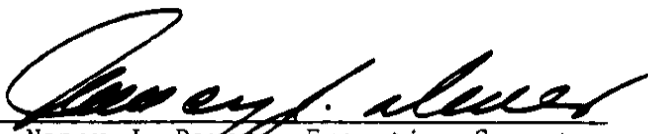
Furthermore, there is some doubt that Claimant could have fulfilled the advance notice requirement in Rule 15(i) since he apparently did not know if the Carrier was going to call him on Thursday or the ensuing days in the Monday through Sunday workweek.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1992.