

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-10432) that:

1. Carrier is in violation of the Clerical Agreement at Birmingham, Alabama on November 23, 1988 by blanking Driver Position No. 216 and requiring another position to perform the duties.

2. Claimant shall now be compensated eight (8) hours' pay at the pro-rata rate of Driver Position No. 216 for November 23, 1988 in addition to any other compensation that this Claimant may have already received on this date."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The Carrier maintains two wagon (van) positions on the second shift at Boyles Yard in Birmingham, Alabama. On November 23, 1988, the Carrier blanked one of the wagon driver jobs (Position No. 216) inasmuch as the incumbent was on vacation. For three hours during the second shift on November 23, 1988, the Carrier directed a Data Clerk to divert from his regular job and perform wagon driver duties.

The Organization initiated a claim alleging that the Carrier violated Section 10(b) of the December 17, 1941 Nonoperating National Vacation Agreement, as amended, which provides:

"Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

The Carrier affirmatively defends the claim on the grounds that virtually every clerk in the yard office periodically drove the vans. However, the Carrier failed to refute the Organization's factual assertion that other employees only occasionally and sporadically performed wagon driver duties and only when the two second shift wagon drivers were actually working. Moreover, the Carrier did not proffer any evidence in support of its affirmative defense that a clerk, other than the assigned wagon drivers, would operate the van for three consecutive hours. On November 23, 1988, the Data Clerk who was taken off his position obviously assumed the regular duties of the vacationing wagon driver in lieu of his normal work.

Since the Data Clerk performed three-eighths or 37.5% of the duties of the vacationing wagon driver, the Carrier breached Section 10(b) of the National Vacation Agreement which limits the Carrier to distributing 25% of the work of a position blanked when the incumbent is on vacation without providing a relief worker. See Third Division Award 20056.

The Organization's requested remedy is excessive. The Carrier shall pay the designated Claimant three hours of pay at the straight time rate in effect on the day of the violation. See Third Division Award 19233.

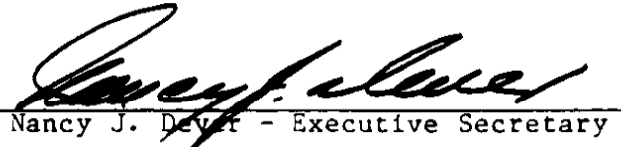
Finally, we note that in its Submission to the Board, the Carrier, for the first time, raised the argument that the Organization failed to identify an appropriate Claimant. We may not consider this argument since it was not raised on the property.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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