Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29321
Docket No. CL-28753
92-3-89-3-160

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10353) that:

1. Carrier violated the provisions of the current Clerk's Agreement at Los Angeles, California, on March 14, 1988, when it failed and/or refused to call D. A. Shenk to protect the short vacancy of J. T. Hicks Position No. 6330; and

2. D. A. Shenk shall now be compensated eight (8) hours' pay at the time and one-half rate of Towerman Position No. 6330 for March 14, 1988, in addition to any other compensation Claimant may have received for this day."

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 Organization filed a claim on the Claimant's behalf, contending that the Carrier violated Rule 7 of the Agreement when it allowed a Towerman to work Position No. 6330 on March 14, 1988, when he had not been off duty at least 16 hours beforehand, as required by Rule 7. The Carrier denied the claim on grounds that dispatchers on the property had decertified and therefore were not subject to the 16-hour provision of Rule 7.

This Board has reviewed the record in this case and we find that the Rule at issue is very clear. Rule 7 provides:

> "Employees temporarily or permanently assigned to official positions with the Company or to positions of train dispatcher, shall retain and accumulate any seniority rights they have under this Agreement. If retained in or returned to the service of the Company after being released from such positions, they must assert such seniority rights in the manner provided in Rule 15; except an employee retaining and accumulating seniority under this Agreement used to work as an extra or unassigned train dispatcher will not again be permitted to perform any service under this Agreement until he has been off duty not less than 16 hours; nor will he be permitted to perform service under this Agreement on rest days of a train dispatcher vacancy being protected until released from such vacancy."

That language clearly states that if an employee works as an Extra Train Dispatcher, that employee must be off duty not less than sixteen hours before being allowed to perform any service under the Agreement.

The record reveals that the Towerman had been off duty for only fifteen hours and one minute prior to returning to a position covered by the Agreement. Under the terms of the Agreement, the Carrier was required to declare the position vacant on March 14, 1988, and to fill it in accordance with Rule 14. That would have made the position available to the Claimant. The Carrier did not do that and, therefore, was in violation of the Agreement. The Claimant should have been called in to work.

This Board rejects the arguments of the Carrier relating to the Yardmaster Section of the Agreement.

Once this Board has determined that there is a violation of the Agreement, we next must determine how much compensation shall be paid to the Claimant for the violation of his rights. The Organization seeks payment in the amount of time and one-half in addition to any other compensation that Claimant may have received for that day. The record reveals that the Claimant's regular days off were Monday and Tuesday and that this incident took place on a Monday. Consequently, Claimant is definitely entitled to time and one-half for the time that he should have been called in to work. However, if Claimant worked for the Carrier during the same hours that the Towerman was wrongfully called back to work, that pay should be deducted from the award made to the Claimant. The Agreement does not allow for penalty payments, but merely allows for the Claimant to be made whole. Time and one-half payment will make the Claimant whole. However, he should not be double paid for any time worked that day.

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 24th day of July 1992.