

NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1

THIRD DIVISION

Award No. 30103
Docket No. CL-30389
94-3-92-3-174

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
(Chicago and North Western Transportation Co.

STATEMENT OF CLAIM: "Claim of the System Committee of the Union (GL-10684) that:

1. Carrier violated the effective agreement when it failed to call Mr. J. Photakis (Messenger-Clerk) for an extra Trucker position at Proviso on January 19, 1990;
2. Carrier shall now compensate Mr. Photakis eight (8) hours' pay at the time and one-half rate for the above referred to 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 employe 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 is a regularly assigned Messenger-Clerk at Proviso Yards. On January 19, 1990, the Carrier established an Extra Trucker position at Global II on the third shift which began at 11:59 p.m.

Earlier in the day, at 3:30 p.m. and 3:40 p.m., the Carrier tried to reach Claimant at his home to ascertain if he wanted to fill the Extra Trucker position. The Carrier received no answer to its calls. At 8:00 p.m., the Carrier offered the overtime assignment to a second shift Intermodal Clerk, who was on duty but

junior to Claimant. The junior employee worked the Extra Trucker position.

The Organization represents that Claimant was home later in the day and had the Carrier made another attempt to call him, Claimant would have taken the call and accepted the extra assignment. However, the record does not reflect whether or not Claimant was at home at 8:00 p.m. when the Carrier formally assigned the junior employee to double over and work the extra position.

The Organization contends that Rule 9(f) requires the Carrier to temporarily fill a position with the senior qualified employee on the seniority district. The Organization further contends that the Carrier should have made attempts to call Claimant closer to the starting time of the extra assignment.

The Carrier responds that Rule 9 governs the bulletining and assignment of new positions and temporary vacancies in excess of thirty days. Stated differently, the Carrier says the Rule applies only to temporary and pending assignment vacancies and is inapplicable to day-to-day extra vacancies. While the Carrier asserts that Claimant was called in error, it alternatively argues that even if Rule 9 is applicable, Claimant was called and he was unavailable for the assignment.

This Board finds that the issue in dispute has already been decided in NRAB Third Division Award 29268. Award 29268 decided an identical dispute with the only difference being that the issue arose at Global I instead of Global II.

This Board, in Award 29268, wrote:

"We find the work performed to fall within the overtime Rules as it is the same work as that performed by regularly assigned Truckers. This is a specific Rule applicable only to work which would be performed by an assigned employee if it were required during his regular hours of assignment. Under Rules 31(g) and (h), the regularly assigned employees have first claim to overtime work which is part of the duties of their assignment. This does not extend, however, to employees of a different class of assignment who happen to be working at the same location. In such situations, general Rules of seniority, including Rules 9(f) and (g) apply."

In essence, Award 29268 definitively decided that Rules 31(g) and (h) are controlling. Since Claimant was not a regularly

assigned Trucker, he was not entitled to be called for extra Trucker assignment.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.