

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30192
Docket No. CL-30320
94-3-92-3-106

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)
(Illinois Central Railroad)

STATEMENT OF CLAIM: "Claim of the System Committee of the Union (GL-10661) that:

1. Carrier violated Rule 9 of the Schedule Agreement when it failed to properly call R. Ashley on March 13, 1990.
2. Carrier shall now be required to compensate Claimant, R. Ashley, eight (8) hours at the time and one-half rate attached to Position 1318-4."

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.

The essential facts are not in dispute. Claimant held a regularly assigned position with hours of 2:00 P.M. to 10:00 P.M. on the claim date. That same date a short vacancy occurred on Position 1318-4. The hours of that position were 7:00 A.M. to 3:00 P.M. Carrier called an employee, junior to Claimant, who was off-duty and who had no conflict between the hours of his regular assignment and the hours of the short vacancy. Carrier bypassed Claimant because of the one hour conflict between his assignment and the vacancy.

The Organization contends that Claimant was the senior employee as well as being off-duty and available at the time of the call. Carrier says Claimant was not "available" within the meaning of the Agreement since he could not protect his own regular assignment if he filled the short vacancy. The Organization cited Third Division Award 21338 in support of its position. The Carrier cited Awards of the Second, Third and Fourth Divisions in support of its interpretation.

While they differ in their interpretations of it, the parties agree that Rule 9(d) (4) governs this dispute. It is the fourth step in a vacancy filling sequence and reads as follows:

"(4) The senior available qualified regularly assigned employee off duty."

We have confined our consideration, as we must, to those matters raised in the on-property handling of this Claim. Material presented for the first time in the parties' Submissions has been disregarded.

The record presents this Board with opposing assertions about the meaning of the same language. Aside from the prior Awards cited, neither party provided support for its position. Of the Awards provided, only the Carrier's citations deal with the kind of "availability" involved here. Second Division Award 12209, Third Division Award 14946, and Fourth Division Awards 2859 and 2945 have found the senior employee to be unavailable under similar circumstances.

In disputes of this nature, the Organization has the burden of proof to establish all elements of the Claim. On this record, it has not done so.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____

Linda Woods

Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.