

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30265
Docket No. CL-30006
94-3-91-3-434

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc., (former
(Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood (GL-10613) that:

(Organization File No. SCL-19.100(1); Carrier's File No. (90-0740)

1. Carrier violated the Agreement when it failed to properly fill Position #302 on April 22, 1990.
2. Because of the above violation, Carrier shall now compensate the Senior Available, extra in preference, one (1) day's pay at the rate of time and one-half at \$108.11 per day for April 22, 1990."

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 employee 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 gravamen of this dispute centers upon Carrier's alleged violation of the Agreement when it "failed to properly fill Position #302 on April 22, 1990." There are four clerical positions on the third shift at Rocky Mount, North Carolina, consisting of one Inventory Clerk and three Data Processing Clerks. The duties of the three Data Processing Clerks are identical, with positions titled and rated the same. This dispute arose when Carrier diverted Clerk J. F. Horton from Position #302, Data Processing Clerk, and assigned him to fill a vacancy on Position #303, Inventory Clerk. Carrier then allegedly "blanked" Position #302.

On April 22, 1990, the District Chairman filed a claim for eight hours overtime on behalf of the senior available employee, identified as C. E. Tyndall. In the claim, the District Chairman stated that the Carrier had removed the employee from Position #302 under "other than emergency status" and was obligated to fill the position from which the employee was removed.

Carrier denied the claim stating that an "emergency" vacancy existed on Position #303 due to a "force situation and no one was available to force." Carrier asserted that it moved one of the Data Processing Clerks to the Inventory Clerk position, blanking Position #302, because "two other parallel positions were able to cover his position on the night in question, and none of the duties assigned to the blanked position were performed exclusively by either of the two remaining positions." Additionally, Carrier argued that the Clerk who was moved to the Inventory Clerk position "was paid penalty pay as required by the Agreement."

In subsequent correspondence, the Organization provided the Director of Labor Relations with call sheets for April 20, 21, and 22, 1990, noting that on April 20 the Supervisor "forced" junior Clerk G. B. Turner to fill Position #303. The Organization pointed out that on April 22 the Supervisor chose to "divert" Mr. Horton to fill Position #303 rather than "force" three employees who had answered the phone, but declined to work.

In a letter dated November 10, 1990, Carrier asserted that the Organization had "failed to identify any claimant." Carrier also reiterated that there was no one available to fill the vacancy on Position #302 on April 22, 1990, stating further "there is no contractual requirement to fill a vacancy occasioned by a diversion."

Further correspondence between the Parties failed to resolve the issue which is now before this Board for adjudication.

This Board does not question Carrier's prerogative to blank a position. However, a position is blanked only if no one works it. Carrier stated that: "Two other parallel positions were able to cover his position," and, "None of the duties assigned to the blanked position was performed exclusively by either of the two remaining positions." This is a candid admission that duties inherent in Position #302 were indeed performed by the remaining employees.

The Organization persuasively demonstrated that Carrier had "forced" a junior employee to fill Position #303 only two days prior to this dispute by submitting the call sheets to prove its assertion. However, as claimed, Carrier failed to abide by the requirements of the Agreement on April 22, 1990. We are convinced that the position at issue was, in fact, filled that night, and not "blanked" as the Carrier contended. For the foregoing reasons, this claim is sustained.

AWARD

Claim sustained.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.