

JAN - 5 1995

Award No. 30629
Docket No. CL-31119
94-3-93-3-245

G. L. HART.

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
(GL-10951) that:

1. Carrier violated the effective agreement when it failed to afford Operator L.R. McAnally the opportunity to fill a short vacancy on May 30, 1992, and then further failed to respond to his claim within the time limits set forth in said agreement;
2. Carrier shall compensate Claimant McAnally eight (8) hours' pay at the time and one-half rate of Operator Ship Canal 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 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.

Both parties are in agreement in this case that the Carrier violated the Agreement when it failed to call the Claimant for the May 30, 1992 vacancy.

The only dispute between the parties is the amount to be paid the Claimant. The claim was filed for 8 hours at the overtime rate. The Carrier offered to settle the claim for 8 hours at the straight time rate of pay. The proper payment for work not performed is 8 hours at the straight time rate. The straight time payment has been upheld numerous times by this Board, including Third Division Award 28277 which involved the parties to this dispute.

The Organization argues the claim should be paid as filed because the Carrier violated the time limit for handling claims. The Claimant filed the claim on June 1, 1992. The record indicates the Carrier responded on July 10, 1992, which is well within the time limits provided in Rule 44. However, the Claimant did not receive the declination until August 24, 1992. The Carrier states that the declination was sent through the Carrier mail system, which is the normal procedure. Apparently the Carrier's response was originally sent to Joliet, while the Claimant works at East Chicago. Neither party has furnished this Board with any history on the property as to the handling of claims. Therefore, the Board cannot determine definitively that Rule 44 has been violated.

Accordingly, we will sustain the claim for 8 hours at the straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

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 28th day of December 1994.