

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31711
Docket No. CL-32173
96-3-94-3-599**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-11109) that:

1. Carrier violated the Agreement when it forced Clerk B. M. Roberson, ID 156549, to work third trick on Position No. S310 on June 19, 1993. Clerk Roberson is on a double-back relief position and he could not work his own assignment on Sunday, June 20, 1993.

2. Carrier shall compensate Clerk Roberson eight (8) hours' pay at the straight time rate for loss of earnings on Sunday, June 20, 1993.”

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 were given due notice of hearing thereon.

Claimant was assigned to a Relief Clerk's position at the Carrier's Crew Management Center in Jacksonville, Florida, which required him to work second shift on Saturday, June 19, 1993 (3:00 P.M. to 11:00 P.M.) and to return on Sunday, June 20, 1993 to cover a first shift position (7:00 A.M. to 3:00 P.M.).

On June 19, Clerk R. C. Wilkes marked off as ill from his assignment (S310) with hours from 11:00 P.M. on June 19 to 7:00 A.M. on June 20. Claimant was forced to fill the S310 vacancy and was paid at the overtime rate. As a result, Claimant worked from 3:00 P.M. on June 19 to 7:00 A.M. on June 20. Because Rule 20(f) states that "no employee will be permitted to work more than (16) consecutive hours in any twenty-four (24) hour period", Claimant was not permitted to work his first shift position on June 20 from 7:00 A.M. to 3:00 P.M. This claim seeks compensation for Claimant at the straight time rate for the June 20 7:00 A.M. to 3:00 P.M. shift Claimant was not permitted to work.

The record indicates that other employees were available to protect the forced overtime on June 19. However, Clerks M. S. Tucker, S. H. Waller, D. J. Landis, J. H. Woods, J. E. Kendrick, W. D. Richarde, and R. D. Kefauver were not called for the vacancy. In addition, Clerk J. N. Crawford was contacted, but was allowed to refuse the assignment.

Rule 18(e) states, in pertinent part:

"RULE 18 - USE OF UNASSIGNED OR EXTRA BOARD EMPLOYEES

e) The designation 'available' as used in paragraphs (c) and (d) of this rule excludes employees who have completed sixteen (16) hours of continuous service, those who cannot protect their regularly assigned positions if called in advance thereof, or employees who cannot fulfill the full eight (8) hours of their regularly assigned position."

From what is before us, we find that Claimant was not "available" under Rule 18(e) for the forced overtime on June 19 and was therefore improperly assigned to work that overtime. Because Claimant worked from 3:00 P.M. to 11:00 P.M. on June 19 covering his own position, when the Carrier forced Claimant to cover the June 19 S310 vacancy from 11:00 P.M. on June 19 to 7:00 A.M. on June 20, Claimant could not cover his position on June 20 from 7:00 A.M. to 3:00 P.M. because Rule 20(f) states that "no employee will be permitted to work more than sixteen (16) consecutive hours in any twenty-four (24) hour period". Therefore, for the purposes of the S310 vacancy on June 19, under Rule 18(e) Claimant was an employee who "cannot protect [his] regularly assigned positions if called in advance thereof" and was unavailable. Particularly given that the record shows that other employees were available, forcing Claimant to work the overtime on June 19 on the S310 vacancy was in contravention of the Rule 18(e).

The problem with this case is the remedy sought by the Organization. The Organization seeks compensation for the shift that Claimant was not allowed to work on June 20. However, Claimant received overtime pay for working the S310 vacancy on June 19. Thus, from what is before us, it does not appear that Claimant was financially harmed as a result of the Carrier's improper assignment. The Organization's argument is that Claimant's five day/40 hour guarantees under Rules 19(b) and 29(c) were violated by the Carrier's refusal to permit Claimant to work the 7:00 A.M. to 3:00 P.M. shift on June 20. But this record does not indicate that Claimant's pay or benefits for the week including June 20 was adversely affected by any such reduction.

Because of the open question of whether Claimant's pay or benefits for the week of June 20, 1993 was adversely affected as a result of the Carrier's refusal to permit Claimant to work the 7:00 A.M. to 3:00 P.M. shift on June 20, we shall condition the remedy in this case. If Claimant's pay or other benefits were reduced or otherwise adversely affected because of his not being able to work the 7:00 A.M. to 3:00 P.M. shift on June 20, 1993, Claimant shall be made whole for that loss. If no adverse effect exists for that week, no affirmative relief is in order. The matter is remanded to the parties to determine from the Carrier's payroll records whether Claimant suffered such a loss.

AWARD

Claim sustained in accordance with the Findings.

ORDER

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 25th day of September 1996.