

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31738
Docket No. MS-32264
96-3-95-3-72**

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

(J. R. Haddock

PARTIES TO DISPUTE: (

(CSX/Sea-Land Terminals, Inc.

STATEMENT OF CLAIM:

"1. Carrier violated the Agreement when it failed or refused to call Claimant J. R. Haddock to protect overtime work on his assigned rest days but instead called R. F. White, who was observing the rest days following a week's vacation.

2. Carrier shall compensate Claimant at the overtime rate for the hours of service performed by Mr. White on September 11 and 12, 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.

This assignment dispute arises at the Carrier's Orlando, Florida, terminal. Claimant, a clerical employee, is senior to unassigned clerical employee R. F. White. On September 11 and 12, 1993, Claimant was observing his rest days. The Carrier called White rather than Claimant to fill a vacancy on those dates. This claim followed.

Claimant argues that his seniority over White should have prevailed for the overtime call because White, like Claimant, was observing rest days on September 11 and 12, 1993. The Carrier, however, asserts that White was not observing rest days but was available for call at the straight time rate.

At best, the record is in conflict. The burden, however, is on the Claimant to demonstrate the factual elements supporting the claim. That burden has not been met.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of October 1996.