

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31973
Docket No. CL-32290
97-3-95-3-122

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 Organization (GL-11131) that:

1. Carrier violated the Agreement on September 15, 1993, when it failed or refused to call Claimant L. H. Garner to protect vacancy of Position 4ENA 200 but instead called junior employee.
2. As a result of the above violation, Carrier shall compensate Claimant Garner, ID 181618, eight (8) hours at the applicable overtime rate.”

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.

On September 15, 1993, Claimant was assigned to Position 102, 7:00 A.M. to 3:00 P.M., at the Customer Service Center in Jacksonville, Florida. An overtime vacancy arose on Position 200 for that date. The parties agree that the calling time for that vacancy was between 1:00 P.M. and 3:00 P.M.

There is some confusion in the record concerning the operative facts. However, the calling records show that a call was made to Claimant at his work station at 3:10 P.M., but Claimant had already departed. A call was then made to Claimant's home at 3:11 P.M., but he had not yet arrived. The caller then moved down the list and a junior employee was used to fill the vacancy.

Claim was filed seeking compensation for Claimant at the overtime rate for the lost work opportunity.

The Carrier must make a bona fide effort to contact employees for overtime vacancies. Calling Claimant at his work station for a vacancy outside the designated calling period for that vacancy when Claimant's shift was over and then attempting to call him at home at a time when it was virtually impossible for him to have made it home from work is not, in our opinion, a bona fide effort.

The Carrier's arguments that the system is cumbersome and that there are a large number of calls to be made in a given day in light of the number of vacancies that occur do not change the result. Those factors cannot be attributed to Claimant. In this case, the Carrier's procedures did not work. Claimant should not be made to suffer because of that failure. Calling an employee at his work station outside of the designated calling period after his shift was over and then attempting to contact him at home at a time when he could not have made it there is just not a bona fide effort.

Third Division Award 29181 is distinguishable. Here, the call was made to Claimant outside of the designated calling period for the vacancy. Here, the Carrier attempted to call Claimant at his work station after his shift ended. That Award does not indicate that a similar circumstance existed in that matter.

With respect to a remedy, the Organization seeks that Claimant be paid at the overtime rate for the missed overtime opportunity. The Carrier argues that any remedy should be at the pro-rata rate. In this case, we find that payment at the overtime rate is appropriate.

As a result of the Carrier's violation of Claimant's seniority entitlements, Claimant lost a work opportunity that would have paid him overtime. The purpose of a remedy for an Agreement violation is to make the affected employee whole. Therefore, the only way to make Claimant whole for the Carrier's violation is to pay him the overtime that he would have earned but for the Carrier's violation. The Carrier has not cited any substantial body of precedent on the property to require a different result.

AWARD

Claim sustained.

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 6th day of May 1997.