

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32167
Docket No. CL-32648
97-3-95-3-580**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 Organization (GL-11186) that:

- 1. Carrier violated the Agreement on June 10, 1994, when it failed to properly call Clerk D. E. Covington to protect vacancy on Position 4F56-213 but instead called a junior employee, M. L. Spivey.**
- 2. Carrier shall compensate Claimant Covington, ID 153672, eight (8) hours at the applicable overtime rate of Position 4F565-213.”**

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 dispute arose on June 10, 1994, at Carrier's Hamlet, North Carolina, Terminal. At that time, Claimant was rested and entitled under the Agreement to be called for a vacancy on Position 4F56-213, working 3:30 P.M. to 11:30 P.M. By Agreement, calling time for vacancies begins two hours in advance of the starting time of the assignment. At 2:32 P.M., Carrier called Claimant and received a busy signal. Carrier immediately re-dialed at 2:33 P.M. and again received a busy signal. The Caller then marked Claimant out of place and, at 2:34 P.M., assigned a junior employee to the vacancy.

On June 10, 1994, Claimant filed a claim for the eight hours at time and one-half he would have received had he been assigned to the position, on the basis that he had not been properly called. That claim was denied on June 20, 1994. By letter of July 19, 1994, the Organization appealed the denial citing the following reasons:

- "1. Clerical employees at Hamlet are allowed a two (2) hour call. Anything short of this is now, and has historically been considered a short call.
2. Position 213 works from 1530 hours to 2330 hours. Calling time for the position is 1330 hours. You acknowledge that the caller failed and/or refused to call Claimant until over an hour after calling time for the position, stating that "...the caller attempted to call...once at 1432 and again at 1433."
3. No reasonable person would make a call, find the line busy, and expect to find the line open in sixty seconds, as Carrier did. This is certain evidence that the Carrier made no real effort to contact Claimant.
4. The Carrier has good reason to avoid contacting Claimant for overtime inasmuch as it reduced Claimant's guarantee by the overtime rate of the position by claiming that Claimant has refused overtime.

5. Claimant was at home. His telephone was available for any reasonable person to contact him, and Claimant would have worked the position if he had been called."

That appeal was denied and the claim was subsequently progressed in the usual manner up to and including the highest Carrier officer empowered to handle such matters. Following conference on the property on January 18, 1995, the issue remained in dispute.

It is the position of the Organization that Carrier failed to make a satisfactory effort to contact Claimant for the disputed vacancy, which Carrier was obligated to offer Claimant under Rule 18(d) of the Agreement. That Rule reads in pertinent part as follows:

**"RULE 18- USE OF UNASSIGNED OR EXTRA BOARD
EMPLOYEES**

* * *

(d) When filling short vacancies occasioned by failure of the regularly assigned relief employee to report for duty, the following procedure will be observed, in the order shown:

1. By use of unassigned employees who have not completed forty (40) hours in that week as provided for in paragraphs (a) and (b) of this rule.
2. By the employee who works the job five (5) days per week, if he desires the work.
3. By the senior qualified available regularly assigned employee, in the immediate office, as established by agreement between Division Chairman and appropriate Carrier officer, who has filed a written request at least five (5) days prior to the occurrence of the vacancy desired."

The Organization maintains that, because a busy signal was received on the first attempt, the Carrier did not make a bona fide attempt to contact Claimant, because no reasonable person would make an important call, find the line busy, and then give up after re-dialing just seconds later. Such calls, placed so close together can only be viewed as a single call. In support of its position, the Organization cites Third Division Award 27701, in which the Board held:

“...It is our view that in the circumstances of this case, a single phone call that cannot be completed because of a busy signal is an insufficient attempt to locate a senior employee for overtime work. In Third Division Awards 4189, 16473, 17062, 17182 and 19658 we upheld claims on the basis that a single phone call did not constitute a reasonable effort to contact an employee with an offer of work he was entitled to accept.”

The Organization further notes that the only Carrier calling Rule which deals with a similar situation concerns calling a person with a beeper. That portion of the “Calling Procedures” reads as follows:

“When calling a Beeper:

- Call the first number listed on the call sheet.**
- If no answer, indicate the time on the call sheets then immediately call the beeper number.**
- Follow beeper instructions, if available, for leaving a message on the beeper, etc.**
- Indicate that you called the beeper and the time called on the call sheet. Wait a minimum of five (5) minutes.**

- Make a second attempt to call the first number indicated on the call sheet. If no answer, indicate the second time called then go to the next employee listed on the call sheet.

DO NOT CALL THE BEEPER A SECOND TIME”

The Organization points out that the instructions specify that the Centralized Caller wait at least five minutes before attempting to call the first number. Only if s/he has waited that interval and again received no answer should the Caller proceed to the next employee on the call sheet.

Finally, the Organization maintains that, because the missed call would have provided Claimant with eight hours of work at the overtime rate, the claim for compensation at that rate is proper.

The Carrier maintains that its attempt to call Claimant was a good faith effort. Further, it insists that the guidelines cited by the Organization regarding Centralized Callers are just that, and do not rise to the importance or enforceability of contract language negotiated with the Organization. Thus, they can be altered or eliminated without notice. Because those guidelines are silent as to the handling of busy signals, the Carrier was under no obligation to do more than what was done in this case.

The Board concurs with the findings of Third Division Award 27701, cited above. While we do not find that Carrier is necessarily bound by the same “guidelines” it has applied to beepers, we do find that making two calls to a number within 60 seconds or less, when the first call resulted in a busy signal, is not reasonable. It cannot be viewed as a “good faith” effort to contact Claimant for work to which he was entitled. Furthermore, because Claimant would have been paid for eight hours at the overtime rate, the claim is sustained as presented.

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 13th day of August 1997.