

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32168
Docket No. CL-32649
97-3-95-3-581**

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-11187) that:

- 1. Carrier violated the Agreement on June 18, 1994, when it failed or refused to make a bona fide effort to call Claimant R. D. Chambers (619112) to protect Position No. 250.**
- 2. Carrier shall now compensate Claimant eight (8) hours' pay at the applicable overtime rate for the violation.”**

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.

The facts of this case are not in dispute. On June 18, 1994, Claimant was working a 7:00 A.M. to 3:00 P.M. position in the Customer Service Center (CSC) in Carrier's facility at Jacksonville, Florida. On that date a vacancy arose in the CSC on Position No. 250, working 3:00 P.M. to 11:00 P.M., for which Claimant was qualified and available. At 3:00 P.M., Claimant was relieved by another employee and left to go home. At 3:15 P.M., Carrier called Claimant at his work location and received no answer. At 3:16 P.M. the Caller telephoned Claimant's residence and received no answer. At that point, the Caller bypassed Claimant and called the next employee. As a result, an employee junior to Claimant filled the position in question.

On June 18, the Organization filed a claim in which it contended that Claimant was entitled to a two hour call and should have been contacted long before his tour of duty ended at 3:00 P.M. In its denial of the claim, Carrier stated:

"Their (*sic*) is no rule in the SCL Agreement that addresses when to call an employee who has left work. The Carrier's needs require filling a vacancy as soon as possible. When the caller is unable to contact an employee for work, that employee is bypassed and the next employee is called."

It is the position of the Organization that the Carrier did not make a bona fide attempt to notify Claimant of the pending overtime work opportunity. Accordingly, the Carrier, because of its negligence violated Rule 18(d)(3) of the Agreement, which provides that the senior qualified available regularly assigned employee shall be used to fill a vacancy. In its May 30, 1995 correspondence on the property, however, the Organization also stated that it was not contending that the Carrier was negligent, but, rather, the Organization's claim concerned "whether the Claimant was penalized when he was not given notification of a work opportunity." The Carrier contends that, in light of the circumstances -- many positions vacant and numerous employees to be called -- the Caller did his best to staff the vacancies in a timely manner. It notes that, while it is unfortunate that Claimant was neither at work nor at home when he was called, that does not *per se* indicate negligence on the part of the Carrier.

In a case precisely on point with the instant dispute, the Board found in Third Division Award 29181 that the Carrier was not in violation of the applicable Agreement when it happened to telephone Claimant while the latter was somewhere in transit between his work and his home. As in that case, there is no indication that the Claimant

here could have been expected to be at home "momentarily." Therefore, it was reasonable for Carrier's Caller to proceed to the next and more junior employee.

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 13th day of August 1997.