

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32474
Docket No. CL-31056
98-3-92-3-925**

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
(Delaware & Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the TCU (GL-10901) that:

I. On behalf of Claimant J. E. Lanzone (92-DH010).

(a) I hereby claim one day's pay at time and one-half rate of pay (Clerk's rate \$13.64) account not being called to cover position 63 - Customer Service Clerk at 1500 hours on February 7, 1992.

(b) I was available for said position and was not called. Junior employe was used at overtime rate.

II. The following claim is hereby presented to the Company in behalf of Claimant D. Rabideau (92-DH016).

(a) The Carrier violated the Clerks' Rules Agreement effective September 24, 1990, particularly Rules 4, 5 and other rules, when it failed to call and work Claimant Rabideau for Customer Service Clerk positions, tour(s) of duty 7:00 A.M. and/or 8:00 A.M., located at CATS Department, Clifton Park, New York, on February 9, 1992, and instead assigned and permitted Clerks B. McManus and D. Gilcrist to work the aforementioned positions, respectively, on that day, at the overtime rate of pay.

(b) That Claimant Rabideau now be allowed eight (8) hours pay based on the pro-rata hourly rate of \$13.64 for February 9, 1992, on account of this violation.

(c) Claimant is qualified, was available at the straight time rate and should have been called and worked in accordance with Rules 4 and 5.

(d) This claim has been presented in accordance with Rule 28-2 and should be allowed."

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.

Before we turn our attention to the merits of the two claims presented herein, we note that we reviewed the Carrier's various procedural arguments and find them to be without merit.

The first claim arose when Claimant Lanzone, who was the incumbent of Relief Customer Service Clerk Position No. 65, was not called to work Customer Service Clerk Position No. 63 on Friday, February 7, 1992 from 3:00 P.M. to 11:00 P.M. at Clifton Park, New York, and instead a junior employee was used to fill the vacancy at the overtime rate.

The facts are clear that on the day in question Claimant should have been called because he was available and qualified to fill the vacancy.

The second claim arose when Claimant Rabideau, who was the senior "spare" Clerk, was not called to fill a Customer Service Clerk vacancy at the pro rata rate on Sunday, February 9, 1992 at Clifton Park, New York. Instead the vacancy was filled by two regularly assigned Clerks working at the overtime rate.

The argument revolves around whether Claimant Rabideau was available to be used at the pro rata rate on the day in question. That question is answered in the affirmative.

The Carrier violated the Agreement in both instances. Therefore, we will sustain each claim for eight hours at the pro rata rate.

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 23rd day of February 1998.