

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32883
Docket No. CL-33640
98-3-97-3-113**

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11690) that:

CLAIM ST-95-04

Claim is on behalf of Mr. Richard Knox, Clerk, at East Deerfield, Massachusetts. This claim is due to Carrier diverting Clerk off the 1600 Clerk's position at Ayer, Massachusetts, to the 0700 Clerk's position at East Deerfield, Massachusetts.

Carrier violated Rule 17 of the Agreement between TCU and the Boston and Maine Corporation Springfield Terminal Railway Company.

Mr. Knox should have been allowed eight hours at time and one-half for Monday, August 15, 1994. He was the proper employee but was never called.

Claim is on behalf of Mr. Richard Knox, Clerk, East Deerfield, Massachusetts. Claim is due to junior employee furloughed working while senior employee was never called.

Carrier violated Rules 17 and 28 of the Agreement between TCU and the Boston & Maine Corporation, Springfield Terminal Railway.

Mr. Knox should be allowed eight (8) hours at time and one-half for the following dates:

1. 1994: July 3, 10; August 7, 14, 27, 28
0600-1500 Clerk, 9 hours per day at
East Deerfield.
2. 1994: July 24, August 27: 0600 Clerk;
July 25: 1500 Clerk;
July 26, 27, 28, 29, August 23,
24, 25, 26: 1500 Clerk.
East Deerfield.
3. 1994: July 1, 2, 5 through 15,
July 18, 19, 25 through 29, August 1
through 5, 8, 15, August 18, 19, 29
through September 2: 0600 Clerk on
Sunday, August 17 (9½ hours and
August 21) plus dead-heading East
Deerfield.
4. 1994: July 9: 9 hours 0600 Agent
July 20, 21, 22: 1400 Clerk
July 30: 1 hour 0600 Agent
July 31: (0600 Clerk)
August 6: 0600 Agent plus Dead-Heading.

CLAIM ST-95-05

Claim is filed on behalf of Mr. Richard Knox, Clerk, East Deerfield, Massachusetts. Claim is due to junior employee furloughed working while senior employee was never called.

Carrier violated Rules 17 and 28 of the Agreement between TCU and the Boston & Maine Corporation (Springfield Terminal Railway Company).

Mr. Knox should be allowed eight (8) hours at time and one-half for the following dates:

1. Claim against J. F. Vasquez
1994: August 28; September 4, 18, 25
Nine (9) hours per day
 $4 \times 18.87 = 679.32$.
2. Claim against R. Bussier
1994: September 7, 8, 9, 10, 17, 18
Six (6) days $\times 18.87 = 855.76$ plus
Six (6) days $\times 4.6$ hours $\times 12.58 = 347.21$
deadheading.
3. Claim against D. Trump
1994: August 30; September 11 (9 Hrs), 20, 21,
22, 23 and 24 (9Hrs)
Seven (7) Days \times Eight (8) hours and
Two (2) hours $\times 18.87 = 1,104.46$.

Total claim is for Two Thousand Nine Hundred Eighty-Six Dollars and Seventy-Five Cents (2,986.75).

Claim is valid and should be paid.

CLAIM ST-96-14

Claim is filed on behalf of Mr. Richard Knox, Clerk, East Deerfield, Massachusetts. The Claim is due to furloughed junior employees working while senior employee was never called.

The Carrier violated Rules 17 and 28 of the Agreement between TCU and the Boston & Maine Corporation (Springfield Terminal Railway Company).

Mr. Knox should be allowed eight (8) hours at time and one-half for the following dates:

1. Claim against J. Vasquez, April 9, 1995:
covered 0600 Clerk at East Deerfield,
Massachusetts,10 hours.
2. Claim against J. Vasquez, April 23, 1995:
covered 0600 Clerk at East Deerfield,
Massachusetts,9 hours.
TOTAL: 19 hours = 358.52.
3. Claim against D. Trump, April 2, 1995: covered
0600 Clerk at East Deerfield, Massachusetts,
.....9 hours.
4. Claim against D. Trump, April 13, 1995:
covered 0600 Clerk at East Deerfield,
Massachusetts,8 hours.
5. Claim against D. Trump, April 16, 1995:
covered 0600 Clerk at East Deerfield,
Massachusetts,10½ hours.
6. Claim against D. Trump, April 30, 1995:
covered 0600 Clerk at East Deerfield,
Massachusetts,8 hours.
TOTAL: 35.5 hours = 669.89.

This claim totals One Thousand Twenty-Eight Dollars and
Forty-Two Cents (\$1,028.42).

The Claim is valid and should be paid.

CLAIM ST-96-34

Claim is filed on behalf of Mr. Richard Knox, Clerk, East
Deerfield, Massachusetts. This claim is due to the Carrier using
furloughed junior employees working while senior employee was
never called.

Carrier violated Rules 17 and 28 of the Agreement between TCU and the Boston and Maine Corporation (Springfield Terminal Railway Company).

Mr. Knox should be allowed eight (8) hours at time and one half for the following positions and dates:

0600 Agent Ayer, Massachusetts June 5, 1995 through June 9, 1995, again June 14, 1995 through June 16, 1995. This is while regular agent on vacation.

8 Days pay punitive 1280.48.

8 Days Deadheading Daily one way 490.91.

Agent Fitchburg, Massachusetts June 12, 1995 and June 13, 1995, account Junior furloughed employee chose not to use his seniority to cover Clerk's position at North Billerica, Massachusetts these dates.

2 Days at punitive rate 334.08.

Deadheading 125.79.

This claim totals Two Thousand Thirty-One Dollars and Twenty-Six Cents (2231.26). Claim is valid and must be paid.

This claim is on behalf of Mr. Richard Knox, East Deerfield, Massachusetts. Claim is for the earnings of Agent Ayer, Massachusetts, June 12th through June 16th, 1995, and the 0600 Clerk at Ayer, Massachusetts, June 17th and June 18th, 1995.

Rules violated are Rules 8 and 10 of the Agreement.

Claim is valid and must be paid.

Ayer Agent Rate	13.34	
7 Days Work	1120.56	
4.6 Hrs Round Trip 7 Days	429.55	(Deadheading)
966 IMiles	<u>202.97</u>	
	1752.97	TOTAL

Claim is further made that the initial denials are not sufficient under Rule 44 thus making the denials untimely."

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 concerning all of the above claims are:

- a. At all times relevant to these claims, Claimant was fully employed with a guaranteed 40 hour work week.
- b. At all times relevant to these claims, several unassigned Clerks were on call and available to cover temporary vacancies.
- c. The Agreement between the parties gives the Carrier the right, indeed the obligation, to fill temporary vacancies with other than regularly assigned employees who would not otherwise have 40 hours in their work week, if available.

- d. The Agreement also allows Claimant to apply for and step up to any temporary vacancy which he would desire, provided he is the senior applicant. Work performed under this provision is paid for at the straight time rate.**
- e. In spite of Claimant's right to apply for any of the temporary vacancies subject to these claims, a right granted him by the provisions of Rule 8(g), the record is void of any evidence that he did so.**

The Organization has the burden to prove the Agreement was violated by the Carrier. It has not met its burden in this case.

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 21st day of October 1998.