

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33422
Docket No. CL-34003
99-3-97-3-527**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the TCIU (GL-11802) that:

I am filing claim on behalf of Mr. John Foley, First Trick Operator, PT Tower, Rigby Yard, Portland, Maine. Claim is for April 22, 1996 at the rate of eight (8) hours of time and one half and eight (8) hours at the rate of straight time.

Carrier violated the Agreement when it held Mr. John Foley off his First Trick position on April 22, 1996, because the Carrier used him on April 21, 1996, thus according to the hours of service he was not rested to cover the First Trick position on April 22, 1996.

Rules violated are, 18.1, 18.2, 18.10, 18.13 and 22 in their entirety.

Claim is valid and must be paid.”

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 are not in dispute. Claimant was assigned his First Trick position on April 22, 1996 and would have worked said assignment, except that the Claimant responded to a call by the Carrier to work April 21, 1996. That call precluded the Claimant from working his regular assignment as the Hours of Service Act intervened. The Claimant therefore could not work his regular assignment and the Organization filed claim for eight hours at the time and a half and eight hours at straight time, account not being rested for the regular assignment.

The Carrier denied both the applicability of the cited Rules and the double payment of both overtime and straight time for being unable to work his First Trick assignment. The Carrier also argues throughout this claim that it was the Federal Hours of Service Law that prevented the Claimant from working his regular assignment and not the Carrier.

The Board finds that the record, Rules and evidence indicate that the Carrier's defense must fail. Awards have already found, and this Board agrees with their findings, that when the Carrier elects to utilize an employee which then causes the loss of a regular work assignment, it must compensate per Agreement language (Third Division Award 27936). The Carrier called the Claimant to work and as well stated in Third Division Award 6781 "could and should have anticipated the application of the Hours of Service Law." Claimant is to be paid as per the Agreement. The Hours of Service Law is not a barrier to compensation.

AWARD

Claim sustained.

Form 1
Page 3

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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 July 1999.