

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33455
Docket No. CL-33930
99-3-97-3-488**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11795) that:

I (Mary Stachura) claim eight hours pay, time and one-half for Saturday, May 25, 1996, for not being called to work 0900-1800 hours shift and Management doing clerical work. Mr. F. C. Loft, Buffalo Terminal Supervisor, did my clerical duties of calling in clerks for a vacancy. Mr. Mark Barker marked off sick while there was no clerk on duty. (Clerical position blanked from 0601 to 0900 hours daily per abolishments.)

The Carrier has violated Rule 1, Rule 5, and other rules of the TCU Clerical Agreement. Carrier has also violated memo dated January 18, 1993, by Mr. A. J. Troccia stating:

“It will be the responsibility of the Transportation Clerks on duty at the time of the call to make whatever calls are necessary to fill the position that will be vacant.”

Mr. Loft did in fact call, W. Morrissey, T. Goergen and K. Kraemer.

I was home and available for the call and my displacement filed and faxed May 24, 1996, for May 25, 1996 effective date.

This claim is in accordance with TCU Clerical Agreement, Rule 28-2.”

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 claim, initiated on May 30, 1996, avers that Carrier violated both the Scope and Overtime Rules when it permitted Buffalo Terminal Supervisor F. C. Loft to perform the clerical duty of calling Clerks to fill a vacancy on May 25, 1996 between 9:00 A.M. and 6:00 P.M. The record reflects that Claimant's prior position had been abolished, and she was not scheduled to displace into her new position until 9:00 P.M. on May 25, 1996.

The on-property handling of this matter focused on the Organization's contention that the calling-in of Clerks to fill a vacancy is work exclusively reserved to Clerks under the Scope Rule, and should have been performed by a Clerk, rather than a Carrier Officer. Before the Board the Organization added the argument that Rule 5(f) governs Claimant's entitlement to have been called for the work in question, even if she were an unassigned employee as alleged by Carrier. The Board is confined to rely upon the record on the property and will not consider new arguments or matters raised for the first time.

Carrier denied this claim on three bases. First, it contended that Claimant was not available for the call because she had not yet assumed a position in this location. Second, Carrier stated that the position was filled by a Clerk who was senior to the Claimant. Third, Carrier argued that because no Clerk was on duty at the time the vacancy occurred, it was within the Terminal Manager's responsibility to assure he had sufficient staff, and the three phone calls he made to fill the vacancy were incidental to his duties in this regard.

A review of the record convinces the Board that the Organization failed to meet its burden of proving that Carrier violated the Agreement by filling the vacancy in issue as it did. Regardless of whether Claimant could be considered unavailable for the position, the fact remains that the senior available Clerk worked the vacancy. Further, there was admittedly no Clerk on duty at the time the incumbent called in sick, and phone calls had to be made to seek a replacement for the vacancy created. There is no dispute that the Terminal Manager made three phone calls which took less than five minutes of his time. Scope Rule 1(c), which provides that clerical duties incidental to the primary duties of a non-covered employee may be performed by such employee, is applicable to the instant situation and permits the Terminal Manager to have acted as he did. Accordingly, the claim must be denied.

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 23rd day of August 1999.