

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33829
Docket No. CL-33127
99-3-96-3-598

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
(Boston & Maine Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11369) that:

I am filing claim on behalf of Mr. H. O. James, Jr., second trick clerk at Ayer, Massachusetts, for Thursday, April 28, 1994.

Carrier is in violation of the contract between the Boston and Main Corporation, and the Transportation Communications International Union, dated August 20, 1973.

On the above-stated date, Mr. James was required to perform emergency services due to non-functional radios of Train Operations Managers at North Billerica, Massachusetts. Mr. James was required to relay a Rule #241 (permission by a stop signal) to Train BADH at AY interlocking from Mainline in a westerly direction. He also relayed a Rule #241 (permission by a stop signal) to Train 261 Piggyback, at Ayer interlocking from the west Wye to Mainline in a westerly direction.

The Carrier violated Rule 16, Rule 20, Paragraphs (a) and (b), and Rule 32, Paragraphs (a), (b) and (c).

Claim is for eight hours, at the rate of \$12.58 per hour, operator's rate. This claim is valid with the nature of Mr. James' responsibility, and therefore should 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.

On April 28, 1994 and due to radio disruptions, Claimant, a second trick Clerk, was required on two occasions during his tour of duty to relay messages from the Carrier's Train Operations Managers in North Billerica, Massachusetts to trains at Ayer. This time claim followed.

First, contrary to the Carrier's position, this Board has jurisdiction to decide the dispute. The Carrier's burden to show that we do not have jurisdiction has not been met. This is not a dispute concerning a disagreement over protective conditions which is to be heard in another forum. From the status of the record before us, this is a dispute concerning alleged Rule violations which can be progressed to this Board.

Second, Section 3(b) of the Implementing Agreement Award does not require a denial of the claim. That section provides:

"(b) The various incidental work rules contained in agreements between the lessor carriers and the various organizations shall be modified to allow incidental work regardless of the location of the work as long as it shall not comprise fifty percent of the total work of an individual employee in any single day."

The Rules relied upon by the Organization are not "incidental work rules" but are provisions which govern emergency service by employees. See Rule 20 ("An

employee assigned to a position subject to the Hours of Service Law will not be required to perform service on other positions except in case of emergency."

Third, with respect to the merits, on the property the Carrier did not refute the Organization's position that the circumstances constituted an "emergency." Claimant performed emergency service under Rule 20 and is entitled to compensation for that service as provided in that Rule. However, given our discretion concerning remedies, in light of the circumstances, Claimant shall only be compensated for the time spent performing that service.

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 21st day of December 1999.