

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33833
Docket No. CL-33253
99-3-96-3-721

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
(CSX Transportation, Inc. (former Seaboard Coast Line
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11453) that:

1. Carrier violated the Agreement on August 30, 1995, when it failed to call Claimant F. O. Ehrmantraut, ID 613837, to fill the vacancy of Clerk R. Casing, who was off sick.
2. Carrier shall compensate Claimant eight (8) hours' pay at the applicable rate for the violation.”

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 August 30, 1995, Claimant was on his rest day from his position at the Carrier's Customer Service Center in Jacksonville. On that date, Clerk R. Casing

marked off sick from Position No. 340 and, because of exhaustion of his sick benefits, was not compensated. The Carrier then blanked Casing's position. Claim was filed on Claimant's behalf because he was not called to fill Casing's position.

Rule 49(k) provides:

“(k) It will be optional with the Carrier to fill or blank a position of an employee who is absent account his personal sickness under this rule or Rule 50, and is receiving an allowance under either rule. If the Carrier elects to fill the vacancy, rules of the Agreement applicable thereto will apply. The right of the Carrier to use other employees occupying positions coming under the scope of this agreement to perform the duties of the position of the employee absent under this agreement is recognized.”

While the Carrier has the general managerial prerogative to blank positions, Rule 49(k) places a specific limitation on that right. Under that Rule, the Carrier has the option to blank a position for an employee absent due to sickness if that employee “is receiving an allowance” Because Casing had exhausted his sick benefits, Casing did not receive such an allowance when he marked off sick. In accordance with the plain language of the Rule, the Carrier therefore could not blank Casing's position without first attempting to fill it.

The Carrier's assertion that Claimant refused a call for another position does not change the result. Aside from the fact that the call records for that position were not part of the record developed on the property, the record indicates that the call refused by Claimant was for a position with a starting time one hour different from the position in dispute. The fact that Claimant may have refused a call for another position does not relieve the Carrier from its obligation to call Claimant for the vacant position in dispute.

As a result, Claimant lost a work opportunity. He shall be compensated accordingly.

AWARD

Claim sustained.

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.