

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33945  
Docket No. CL-34592  
00-3-98-3-212**

**The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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-11970) that:**

**Claim No. 1  
(Carrier File 6 (97-0019)  
(TCU File 4.12 (7) SCL)**

- 1. The Carrier violated Rules 18 and 19 of the TCU Clerical Agreement when it failed to establish five (5) regular relief assignments at Crew Management Center, 116 Druid Street, and 3019 Warrington Street, Jacksonville, Florida.**
- 2. Carrier shall now be required to compensate the Senior Available Clerk at the appropriate rate (pro rata or punitive) beginning sixty (60) days prior to this date (June 24, 1996) and continuing for each shift of each day until all regular relief assignments are established or the violations cease entirely.**

**Claim No. 2  
Carrier File 6 (97-0018)  
(TCU File 4.11 (7) SCL)  
T. J. Lesaganich**

- 1. Carrier violated the Agreement on Sunday, August 4, 1996, when it failed to call Clerk T. J. Lesaganich, ID 098853, first as incumbent on assignment S306 on duty at 2300 hours.**

2. **Carrier shall now be required to pay Clerk Lesaganich eight (8) hours at the punitive rate.**

**Claim No. 3**  
**(Carrier File 6 (97-0090)**  
**(TCU File 4.13 (7) SCL)**  
**W. H. Bowling**

1. **Carrier violated the Agreement on Monday, October 14, 1996, when it failed to call Clerk W. H. Bowling, ID 616331, first as incumbent on assignment L104 on duty at 0700 hours.**
2. **Carrier shall now be required to pay Clerk Bowling eight (8) hours' pay at the punitive rate.**

**Claim No. 4**  
**(Carrier File 6 (97-0092)**  
**(TCU File 4.15 (7) SCL)**  
**W. H. Bowling**

1. **Carrier violated the Agreement on Monday, October 7, 1996, when it failed to call Clerk W. H. Bowling, ID 616332, first as incumbent on assignment L104 on duty at 0700 hours.**
2. **Carrier shall now be required to pay Clerk Bowling eight (8) hours' pay at the punitive rate.**

**Claim No. 5**  
**(Carrier File 6 (97-0093)**  
**(TCU File 4.16 (7) SCL)**  
**W. H. Bowling**

1. **Carrier violated the Agreement on Monday, August 19, 1996, when it failed to call Clerk W. H. Bowling, ID 616332, first as incumbent on assignment L104 on duty at 0700 hours.**
2. **Carrier shall now be required to pay Clerk Bowling eight (8) hours' pay at the punitive rate.**

**Claim No. 6  
(Carrier File 6 (97-0094)  
(TCU File 4.17 (7) SCL)  
W. H. Bowling**

- 1. Carrier violated the Agreement on Monday, September 30, 1996, when it failed to call Clerk W. H. Bowling, ID 616332, first as incumbent on assignment L104 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Bowling eight (8) hours' pay at the punitive rate.**

**Claim No. 7  
(Carrier File 6 (97-0095)  
(TCU File 4.18 (7) SCL)  
W. H. Bowling**

- 1. Carrier violated the Agreement on Monday, September 16, 1996, when it failed to call Clerk W. H. Bowling, ID 616332, first as incumbent on assignment L104 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Bowling eight (8) hours' pay at the punitive rate.**

**Claim No. 8  
(Carrier File 6 (97-0096)  
(TCU File 4.19 (7) SCL)  
W. H. Bowling**

- 1. Carrier violated the Agreement on Monday, September 9, 1996, when it failed to call Clerk W. H. Bowling, ID 616332, first as incumbent on assignment L104 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Bowling eight (8) hours' pay at the punitive rate.**

**Claim No. 9**  
**(Carrier File 6 (97-0097)**  
**(TCU File 4.20 (7) SCL)**  
**R. A. Long**

- 1. Carrier violated the Agreement on Monday, October 14, 1996, when it failed to call Clerk R. A. Long, ID 501237, first as incumbent on assignment S109 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Long eight (8) hours' pay at the punitive rate.**

**Claim No. 10**  
**(Carrier File 6 (97-0098)**  
**(TCU File 4.21 (7) SCL)**  
**W. H. Bowling**

- 1. Carrier violated the Agreement on Monday, October 21, 1996, when it failed to call Clerk W. H. Bowling, ID 616332, first as incumbent on assignment L104 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Bowling eight (8) hours' pay at the punitive rate.**

**Claim No. 11**  
**(Carrier File 6 (97-0163)**  
**(TCU File 4.22 (7) SCL)**  
**M. T. Hughes**

- 1. Carrier violated the Agreement on Wednesday, October 9, 1996, when it failed to call Clerk M. T. Hughes, ID 159181, first as incumbent on assignment F103 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Hughes eight (8) hours' pay at the punitive rate.**

**Claim No. 12  
(Carrier File 6 (97-0164)  
(TCU File 4.23 (7) SCL)  
J. H. Woods**

- 1. Carrier violated the Agreement on August 13 and 20, and September 3, 10 and 24, 1996, when it failed to call Clerk J. H. Woods, ID 171599, first as incumbent on assignment S210 on duty at 1500 hours.**
- 2. Carrier shall now be required to pay Clerk Woods eight (8) hours' pay at the punitive rate for each of the five (5) above-cited claims.**

**Claim No. 13  
(Carrier File 6 (97-0165)  
(TCU File 4.24 (7) SCL)  
D. A. Edney**

- 1. Carrier violated the Agreement on August 27, September 3 and 10, and October 1, 1996, when it failed to call Clerk D. A. Edney, ID 609919, first as incumbent on assignment L302 on duty at 2300 hours.**
- 2. Carrier shall now be required to pay Clerk Edney eight (8) hours' pay at the punitive rate for each of the four (4) claims cited above.**

**Claim No. 14  
(Carrier File 6 (97-0166)  
(TCU File 4.25 (7) SCL)  
D. F. Kay**

- 1. Carrier violated the Agreement on September 17 and October 8, 1996, when it failed to call Clerk D. F. Kay, ID 618478, first as incumbent on assignment C301 on duty at 2300 hours.**
- 2. Carrier shall now be required to pay Clerk Kay eight (8) hours' pay at the punitive rate for each of the above-cited claims.**

**Claim No. 15**  
**(Carrier File 6 (97-0167))**  
**(TCU File 4.26 (7) SCL)**  
**M. T. Hughes**

- 1. Carrier violated the Agreement on Wednesday, September 4, 1996, when it failed to call Clerk M. T. Hughes, ID 159181, first as incumbent on assignment F103 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Hughes eight (8) hours' pay at the punitive rate.**

**Claim No. 16**  
**(Carrier File 6 (97-0168))**  
**(TCU File 4.27 (7) SCL)**  
**G. E. Speis**

- 1. Carrier violated the Agreement on August 23 and 30, and September 6, 1996, when it failed to call Clerk G. E. Speis, ID 503655, first as incumbent on assignment N304 on duty at 2300 hours.**
- 2. Carrier shall now be required to pay Clerk Speis eight (8) hours' pay at the punitive rate for each of the three (3) above-cited claims.**

**Claim No. 17**  
**(Carrier File 6 (97-0169))**  
**(TCU File 4.28 (7) SCL)**  
**D. D. Bowman**

- 1. Carrier violated the Agreement on August 19 and 26, September 23 and 30, and October 7, 1996, when it failed to call Clerk D. D. Bowman, ID 181685, first as incumbent on assignment S116 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Bowman eight (8) hours' pay at the punitive rate for each of the above-cited claims.**

**Claim No. 18  
(Carrier File 6 (97-0170)  
(TCU File 4.29 (7) SCL)  
R. A. Long**

- 1. Carrier violated the Agreement on Monday, October 7, 1996, when it failed to call Clerk R. A. Long, ID 501237, first as incumbent on assignment S109 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Long eight (8) hours' pay at the punitive rate.**

**Claim No. 19  
(Carrier File 6 (97-0171)  
(TCU File 4.30 (7) SCL)  
J. J. Parteleno**

- 1. Carrier violated the Agreement on Tuesday, October 8, 1996, when it failed to call Clerk J. J. Parteleno, ID 520705, first as incumbent on assignment S307 on duty at 2300 hours.**
- 2. Carrier shall now be required to pay Clerk Parteleno eight (8) hours' pay at the punitive rate.**

**Claim No. 20  
(Carrier File 6 (97-0172)  
(TCU File 4.31 (7) SCL)  
S. E. Wiedmer**

- 1. Carrier violated the Agreement on Tuesday, October 15, 1996, when it failed to call Clerk S. E. Wiedmer, ID 614787, first as incumbent on assignment S108 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Wiedmer eight (8) hours' pay at the punitive rate.**

**Claim No. 21  
(Carrier File 6 (97-0173)  
(TCU File 4.32 (7) SCL)  
J. D. Klein**

- 1. Carrier violated the Agreement on Friday, October 18, 1996, when it failed to call Clerk J. D. Klein, ID 610135, first as incumbent on assignment L301 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Klein eight (8) hours' pay at the punitive rate.**

**Claim No. 22  
(Carrier File 6 (97-0174)  
(TCU File 4.33 (7) SCL)  
M. C. Derricks**

- 1. Carrier violated the Agreement on Thursday, August 22, 1996, when it failed to call Clerk M. C. Derricks, ID 518261, first as incumbent on assignment S323 on duty at 2300 hours.**
- 2. Carrier shall now be required to pay Clerk Derricks eight (8) hours' pay at the punitive rate.**

**Claim No. 23  
(Carrier File 6 (97-0175)  
(TCU File 4.34 (7) SCL)  
A. E. Chinn**

- 1. Carrier violated the Agreement on September 13 and 28, and October 11, 1996, when it failed to call Clerk A. E. Chinn, ID 522622, first as incumbent on assignment F204 on duty at 1500 hours.**
- 2. Carrier shall now be required to pay Clerk Chinn eight (8) hours' pay at the punitive rate for each of the three (3) above-cited claims.**



**Claim No. 24  
(Carrier File 6 (97-0176)  
(TCU File 4.35 (7) SCL)  
D. G. Barber**

- 1. Carrier violated the Agreement on September 18, and October 9 and 16, 1996, when it failed to call Clerk D. G. Barber, ID 624191, first as incumbent on assignment L305 on duty at 2300 hours.**
- 2. Carrier shall now be required to pay Clerk Barber eight (8) hours' pay at the punitive rate for each of the three (3) above-cited claims.**

**Claim No. 25  
(Carrier File 6 (97-0177)  
(TCU File 4.36 (7) SCL)  
L. Rivers**

- 1. Carrier violated the Agreement on August 22, September 5, October 3, 10, and 17, 1996, when it failed to call Clerk L. Rivers, ID 625599, first as incumbent on assignment M302 on duty at 2300 hours.**
- 2. Carrier shall now be required to pay Clerk Rivers eight (8) hours' pay at the punitive rate for each of the five (5) above-cited claims.**

**Claim No. 26  
(Carrier File 6 (97-0178)  
(TCU File 4.37 (7) SCL)  
G. W. Morgan**

- 1. Carrier violated the Agreement on August 19 and September 9, 1996, when it failed to call Clerk G. W. Morgan, ID 157031, first as incumbent on assignment S312 on duty at 2300 hours.**
- 2. Carrier shall now be required to pay Clerk Morgan eight (8) hours' pay at the punitive rate for each of the two (2) above-cited claims.**

**Claim No. 27  
(Carrier File 6 (97-0209)  
(TCU File 4.39 (7) SCL)  
W. H. Bowling**

- 1. Carrier violated the Agreement on Monday, October 21, 1996, when it failed to call Clerk W. H. Bowling, ID 616332, first as incumbent on assignment L104 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Bowling eight (8) hours' pay at the punitive rate.**

**Claim No. 28  
(Carrier File 6 (97-0210)  
(TCU File 4.40 (7) SCL)  
D. D. Bowman**

- 1. Carrier violated the Agreement on Monday, October 28, 1996, when it failed to call Clerk D. D. Bowman, ID 181685, first as incumbent on assignment S116 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Bowman eight (8) hours' pay at the punitive rate.**

**Claim No. 29  
(Carrier File 6 (97-0211)  
(TCU File 4.41 (7) SCL)  
M. T. Hughes**

- 1. Carrier violated the Agreement on Wednesday, January 15, 1997, when it failed to call Clerk M. T. Hughes, ID 159181, first as incumbent on assignment F103 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Hughes eight (8) hours' pay at the punitive rate.**

**Claim No. 30  
(Carrier File 6 (97-0212)  
(TCU File 4.42 (7) SCL)  
M. T. Hughes**

- 1. Carrier violated the Agreement on Wednesday, November 27, 1996, when it failed to call Clerk M. T. Hughes, ID 159181, first as incumbent on assignment F103 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Hughes eight (8) hours' pay at the punitive rate.**

**Claim No. 31  
(Carrier File 6 (97-0213)  
(TCU File 4.43 (7) SCL)  
M. T. Hughes**

- 1. Carrier violated the Agreement on Wednesday, October 23, 1996, when it failed to call Clerk M. T. Hughes, ID 159181, first as incumbent on assignment F103 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Hughes eight (8) hours' pay at the punitive rate.**

**Claim No. 32  
(Carrier File 6 (97-0214)  
(TCU File 4.44 (7) SCL)  
D. A. Edney**

- 1. Carrier violated the Agreement on Tuesday, October 22, 1996, when it failed to call Clerk D. A. Edney, ID 609919, first as incumbent on assignment L302 on duty at 2300 hours.**
- 2. Carrier shall now be required to pay Clerk Edney eight (8) hours' pay at the punitive rate.**

**Claim No. 33**  
**(Carrier File 6 (97-0215)**  
**(TCU File 4.45 (7) SCL)**  
**R. A. Long**

1. **Carrier violated the Agreement on Monday, October 28, 1996, when it failed to call Clerk R. A. Long, ID 501237, first as incumbent on assignment S109 on duty at 0700 hours.**
2. **Carrier shall now be required to pay Clerk Long eight (8) hours' pay at the punitive rate.**

**Claim No. 34**  
**(Carrier File 6 (97-0216)**  
**(TCU File 4.46 (7) SCL)**  
**W. H. Bowling**

1. **Carrier violated the Agreement on Monday, October 28, 1996, when it failed to call Clerk W. H. Bowling, ID 616332, first as incumbent on assignment L104 on duty at 0700 hours.**
2. **Carrier shall now be required to pay Clerk Bowling eight (8) hours' pay at the punitive rate.**

**Claim No. 35**  
**(Carrier File 6 (97-0217)**  
**(TCU File 4.47 (7) SCL)**  
**D. F. Kay**

1. **Carrier violated the Agreement on Tuesday, December 10, 1996, when it failed to call Clerk D. F. Kay, ID 618478, first as incumbent on assignment C301 on duty at 2300 hours.**
2. **Carrier shall now be required to pay Clerk Kay eight (8) hours' pay at the punitive rate.**

**Claim No. 36**  
**(Carrier File 6 (97-0354)**  
**(TCU File 4.48 (7) SCL)**  
**R. A. Long**

1. **Carrier violated the Agreement on Monday, November 18, 1996, when it failed to call Clerk R. A. Long, ID 501237, first as incumbent on assignment S109 on duty at 0700 hours.**
2. **Carrier shall now be required to pay Clerk Long eight (8) hours' pay at the punitive rate for each and every Monday until this violation ceases or this rest day is protected by a regular relief assignment.**

**Claim No. 37**  
**(Carrier File 6 (97-0355)**  
**(TCU File 4.49 (7) SCL)**  
**M. T. Hughes**

1. **Carrier violated the Agreement on Wednesday, January 29, 1996, when it failed to call Clerk M. T. Hughes, ID 159181, first as incumbent on assignment F103 on duty at 0700 hours.**
2. **Carrier shall now be required to pay Clerk Hughes eight (8) hours' pay at the punitive rate.**

**Claim No. 38**  
**(Carrier File 6 (97-0356)**  
**(TCU File 4.50 (7) SCL)**  
**M. T. Hughes**

1. **Carrier violated the Agreement on Wednesday, February 5, 1996, when it failed to call Clerk M. T. Hughes, ID 159181, first as incumbent on assignment F103 on duty at 0700 hours.**
2. **Carrier shall now be required to pay Clerk Hughes eight (8) hours' pay at the punitive rate.**

**Claim No. 39**  
**(Carrier File 6 (97-039)**  
**(TCU File 4.51 (7) SCL)**  
**M. T. Hughes**

- 1. Carrier violated the Agreement on Wednesday, February 12, 1997, when it failed to call Clerk Hughes, ID 159181, first as incumbent on assignment F103 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Hughes eight (8) hours' pay at the punitive rate.**

**Claim No. 40**  
**(Carrier File 6 (97-0358)**  
**(TCU File 4.52 (7) SCL)**  
**M. T. Hughes**

- 1. Carrier violated the Agreement on Wednesday, February 19, 1997, when it failed to call Clerk M. T. Hughes, ID 159181, first as incumbent on assignment F103 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Hughes eight (8) hours' pay at the punitive rate.**

**Claim No. 41**  
**(Carrier File 6 (97-0359)**  
**(TCU File 4.13 (7) SCL)**  
**M. T. Hughes**

- 1. Carrier violated the Agreement on Wednesday, February 26, 1997, when it failed to call Clerk M. T. Hughes, ID 159181, first as incumbent on assignment F103 on duty at 0700 hours.**
- 2. Carrier shall now be required to pay Clerk Hughes eight (8) hours' pay at the punitive rate.**

Claim No. 42  
(Carrier File 6 (97-0026)  
(TCU File 4.13 (7) SCL)  
R. A. Long

1. Carrier violated the Agreement on the dates identified in the original claims, when it failed to call Clerk R. A. Long, ID 501237, first as incumbent on assignment S109, to protect work on his assigned rest days.
2. Carrier shall now be required to pay Clerk Long eight (8) hours' pay at the punitive rate for each of the dates cited in the above-cited seventeen (17) claims.

**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 Crew Management Center in Jacksonville, Florida, was established in 1988. According to the Carrier, there were at the time of the claim submission, 206 regularly assigned Crew Dispatcher clerical positions, approximately 45 of which positions were Relief Crew Dispatcher positions; in addition, there were approximately 31 positions assigned to the Extra Board.

The dispute here under review concerns whether the Carrier was obligated to establish additional regular relief assignments, with the effect of requiring less frequent use of Extra Board employees to fill rest day assignments.

At the Referee Hearing on September 23, 1999, local representatives of the Carrier and the Organization indicated willingness to explore the practicality of establishing additional regular relief assignments. Such efforts resulted in the establishment of two additional regular relief assignments for the then existing 21 "tag days." No further agreement was reached, with the Carrier maintaining the impracticability of eliminating the remaining 11 tag days from the more than 200 crew calling positions.

As to the current situation, the Board is satisfied that it need provide no further resolution. What remains, therefore, is the resolution of a monetary remedy, if any, for the Carrier's earlier failure to establish additional relief positions.

Because of the continuing nature of the claim, the Board does not agree with the Carrier that the dispute is time-barred.

In defense of its position, the Organization relies on Rule 19, which includes the following:

**"(f) Regular Relief Assignment -**

- (1) All possible relief assignments, with five days of work and two consecutive rest days, will be established to do the work necessary on rest days of assignments in six or seven day service, . . . ."**

Rule 19(g)(1) echoes this requirement to avoid non-consecutive rest days, stating:

- "(1) All possible regular relief positions shall be established pursuant to paragraph (f) of this rule."**

In addition, the Organization points to the Note to Rule 18, concerning the use of Extra Board employees. The Note reads as follows:

**"Extra boards will not be used to avoid establishing assigned new positions or to avoid abolishing existing assigned positions."**

By contrast and as part of its argument, the Carrier refers to Rule 20(f), which states in pertinent part:



**“Work on Unassigned Days - Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; . . . .”**

**This provision specifically refers to work “which is not a part of any assignment.” The Board finds it does not negate the Extra Board provisions quoted above, the thrust of which is the requirement to create assignments.**

**The Board concludes that the cited portions of Rules 18 and 19 placed the Carrier in violation of the Agreement. As noted at the outset, the parties cooperatively remedied the situation by the creation of two new relief positions. Whether it is “possible” to create further such positions cannot be determined by the Board.**

**The difficulty comes with the remedy sought by the Organization.**

**Claim No. 1 seeks compensation for the “Senior Available Clerk.” The Board does not disregard the Carrier’s discussion concerning the establishment of the Crew Management Center and the training and experience required of employees for this work. From the available record, the Board is unable to determine at what earlier point, if any, new relief positions would have been “possible.” Thus, the identification of the appropriate “Senior Available Clerk” becomes uncertain, and there is no reasonable basis for assessment of a monetary remedy.**

**As to Claims 2-42 the remedy sought in each claim is for additional pay for a regularly assigned employee. If the Carrier had created additional relief positions at the outset of the claim in 1996, it would be employees added to the force who would have benefitted, and not the Claimants herein. The Board is required to remedy a loss where an Agreement violation is shown. It would be a penalty rather than a remedy to make payment to those employees whose hours would not have been affected had the additional relief positions been established at an earlier date. The Board’s authority does not extend to that type of penalty.**

**The Board thus partially sustains Paragraph (1) of Claim No. 1, but necessarily denies compensation sought by the Organization. This conclusion is supported by the recent action taken by the parties at the Board’s urging to create two additional regular relief assignments.**

**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 Awards is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 22nd day of February, 2000.**

Employee Member's Concurring and Dissenting Opinion  
to  
Third Division Award No. 33945, Docket No. CL-34592  
(Referee H. L. Marx, Jr.)

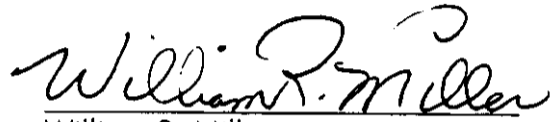
We concur with the Majority's conclusion that Carrier violated Rules 18 and 19 by failing to establish "all possible relief assignments" and then by filling the resultant vacancies by improperly utilizing the Guaranteed Extra Board. We must dissent, however, from the balance of the Majority's opinion.

Prior to the issuance of the Award, the Board urged the partisan advocates "to meet and confer for the purpose of determining what steps, if any, would be mutually acceptable to end the dispute on a prospective basis." Because the Employees had been trying since before the initial claim was filed to get the Carrier to meet for just this purpose – a fact which was well-developed in the record and not denied by Carrier – we welcomed the Board's request, which we viewed as an attempt to mediate a solution which would avoid prolonging the violation (and thus Carrier's liability). The Board's urging was apparently sufficient to bring Carrier to the table, and subsequently two relief positions were immediately established. That result, in itself, provided conclusive evidence that if not for Carrier's past recalcitrance, it would have been possible all along to establish at least two positions, thus substantiating a remedy of at least ten days pay per week for the entire period claimed. Thus, the Majority need not have determined, "Whether it is possible to create further such positions," in order to conclude that some quantifiable damage had been done. Notwithstanding, we also proposed the establishment of two more positions, but Carrier refused to meet further after establishing the first two positions, a fact which the Majority does not even mention.

The Majority further postulates that the remedy in Claims 2-42 is precluded by the fact that if Carrier had established relief positions, "...it would have been employees added to the force who would have benefitted, and not the Claimants herein." Such theory is absurd on its face, for if applied, the Employees could never prevail in any case brought on by a carrier's failure to maintain a sufficient work force – a causal factor in hundreds, if not thousands of cases which have already been decided in favor of the Employees. In short, we can't file claims on behalf of employees who are not yet in service, nor do we have to. The Rule we relied on in support of the remedy shows clearly and unambiguously that the incumbent who works the position five days per week should have been called, not the Guaranteed Extra Board. Indeed, the Majority's theory is further puzzling because if the Carrier had created the additional relief positions, there obviously would have been no claim in the first instance.

The Employees voluntarily, and in a spirit of cooperation, participated in the Board's mediation proposal, which was specifically self-limited to resolution on a *prospective* basis. That term means "future." We did not intend for our participation in the establishment of two relief positions to become an excuse for the Majority to ignore the more than three and one-half years of proven past violations embodied by the claims before it. The result of the Majority's Award is that Carrier has violated the cited Rules with impunity and will no doubt do so again without hesitation or fear of redress.

Respectfully submitted,

A handwritten signature in cursive script that reads "William R. Miller". The signature is written in dark ink and is positioned above the printed name.

William R. Miller

TCU Labor Member, NRAB

March 3, 2000