

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34022
Docket No. CL-33187
00-3-96-3-608**

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
(Burlington Northern Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11374) that:

1. Carrier violated the BN/TCU Working Agreement at Alliance, Nebraska, when Carrier placed Ms. V. J. Small on call, outside and in addition to her regularly assigned hours and assigned rest days at the Material Department, Alliance, Nebraska, for the week of August 14, 1992, through August 20, 1992.
2. Carrier shall now be required to pay Ms. Small four (4) hours at time and one-half at the appropriate rate of pay for each day, August 14, 1992, through August 20, 1992.”

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 Claimant holds a partially exempt Store Foreman's position in the Material Department at Alliance, Nebraska. The claim seeks four hours pay at the time and one-half rate for days set forth in the claim when the Claimant was on call during off duty hours and assigned rest days.

Correspondence sent to all Material Department employees shows that during the week of August 14 - 20, 1992, the Claimant was listed as one of several "Material Department Supervisors to be called" (along with the Material Manager) with a listed home phone number and that "[i]n addition to home phone numbers, pager number ***-****, #101 can also be used and a hand held MRAS will be carried."

The claim as filed focused upon Rule 38:

"Rule 38. NOTIFIED OR CALLED:

- A. Employees notified or called to perform work not continuous with, before or after, the regular work period, shall be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half (1-1/2) will be allowed on the minute basis. Overtime continuous with the regular work period will be paid on the minute basis.
- B. Employees notified or called to perform work on their assigned rest days shall be allowed a minimum of four (4) hours at time and one-half (1-1/2) for four (4) hours; work or less, and if held on duty in excess of four (4) hours, time and one-half (1-1/2) will be allowed on the minute basis.
- C. Employees notified or called to perform work on specified holidays shall be allowed a minimum of eight (8) hours at time and one-half (1-1/2) rate."

On the property, the Organization specifically took the position that the claim involved "... a regularly scheduled employee being required to be on stand-by call" [emphasis added]. From that factual premise, the Organization relied upon a number of Awards concerning standby service. See e.g., Third Division Award 1070 ("... these employees were officially instructed to hold themselves available for duty..."); Third

Division Award 1675 (“... required to be ready for service. . . .”); and Third Division Award 28801 (“... the Claimant was required to perform a service for the Carrier. . . .”) [emphasis added].

That factual premise was the opposite of the facts asserted by the Carrier. According to the Carrier, the Organization’s claim was “. . . based on exaggerated assumptions” in that “[t]he Organization is in error when it asserts that the Claimant was requested by the Carrier to be on call. . . .” Specifically, according to the Carrier, “Claimant Small volunteered to be on this list since its inception in February 1992.” The Carrier provided a statement from the Material Manager that the Claimant and two other individuals were asked if they desired to be on the on call list and the Claimant and one other individual accepted. According to the Material Manager’s statement, the Claimant’s participation on the list was “entirely voluntarily” [sic] and the individual who declined was never placed on the list. A statement from the Claimant shows the following:

“I, Vickie J. Small have voluntarily been on the “On Call” list since Feb. of 1992. Don Goetz my Material Manager asked me if I would mind once every five weeks being on call. I was not required to go on the list, this was entirely voluntary on my part. I do submit an overtime card when I am called.”

The Material Manager further states that the Claimant can be taken off the list at “anytime.” According to the Carrier on the property, “. . . if an employee on this list cannot be reached, then Carrier simply moves on and calls the next listed qualified employee.”

Thus, according to the Carrier and contrary to the Organization’s position that the Claimant’s participation was “required,” the Claimant’s appearance on the call list was purely voluntary; the Claimant could be relieved of the obligation at any time; and there was no consequence to the Claimant for not responding to a call.

The burden in this matter rests with the Organization to show specific facts and a violation of the applicable Rule. In this record, the factual premise of whether the Claimant was “. . . required to be on stand-by call” as asserted by the Organization has been specifically refuted by the Carrier. The Organization’s required burden has not

Form 1
Page 4

Award No. 34022
Docket No. CL-33187
00-3-96-3-608

been carried. Given that the Organization's factual premise has not been demonstrated, this claim must fail.

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 25th day of May, 2000.