

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34210
Docket No. CL-35458
00-3-99-3-395**

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc. (former Baltimore and Ohio
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12373) that:

1. Carrier violated the Clerical Agreement on Tuesday, December 10, and Wednesday, December 11, 1996, when it called Mr. R. V. Campbell off vacation to fill Operator positions.
2. Carrier shall compensate Clerk Campbell, ID 201006, five (5) days' penalty rate of \$124.34, a total of \$932.55, for this 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 Sunday, December 8, 1996 the Claimant commenced a five-day vacation concluding on December 12, 1996. The Carrier compensated the Claimant one week's vacation pay. On December 10 and 11, 1996 the Claimant filled Operator vacancies at West Cumbo Tower and Miller Tower, respectively, near Hedgesville, West Virginia. The Carrier compensated the Claimant at the time and one-half rate for the work he performed on December 10 and 11, 1996. The Claimant now seeks overtime pay for the three other days of his vacation because it was interrupted at the behest of the Carrier.

The record contains a dispute regarding whether the Carrier required the Claimant to work the two vacancies or whether the Claimant voluntarily worked on two of his vacation days. Stated differently, the Organization asserts that the Carrier instructed the Claimant to fill the two vacancies, while the Carrier contends that the Claimant was free to accept or reject the call for work.

The Organization failed to meet its burden of proving that the Claimant was forced to forego two days of vacation during his scheduled five-day vacation period to fill the two vacancies. The record contains some evidence that, due to the application of the Hours of Service Law, no other employee was readily available to fill the vacancies. However, even if the Claimant was the only available employee, there is insufficient evidence that he involuntarily worked on the two days. Perhaps, if the Claimant had turned down the call, the Carrier may have force assigned him to the vacancy but, within this particular record, such circumstances did not occur.

Because the Claimant accepted the call to work, this case involves the straightforward application of Section 5 of Appendix C, which in pertinent part reads, "Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay." [The Board notes that this language was carried forward from the nonoperating National Vacation Agreement into Appendix C of the applicable Agreement.] The above-quoted language is clear and unambiguous. The Claimant was entitled to his vacation pay plus pay at the overtime rate for work performed during his vacation. The Carrier paid him his aggregate five days of vacation pay, which included vacation pay for the two days he worked, and the Carrier also paid the Claimant at the overtime rate for work performed on December 10 and 11, 1996.

Therefore, the Carrier properly compensated the Claimant. Thus, the claim for overtime pay on the three other days is not supported by the pertinent Rule in the Agreement.

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, 2000.