

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35444
Docket No. CL-35430
01-3-99-3-328**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12343) that:

Claim of the System Committee of the TCU (NEC-1546):

Please accept this as my (Paul Sprinkle) claim for 8 hours overtime pay for Sunday October 26, 1997, as I was off duty on my relief day and not called.

Instead Dave Coyle was diverted from his regular job to cover the first trick at New Haven East. Since I own the first trick and also senior man I should have been used.

As information I called the Chief's office at 3 P.M. on Saturday October 25, 1996 to see if I was needed and spoke to Bob Pelictier (witness by V. Timmons and Bill Hacket) of Metro North. Bob told me he was waiting to see if Mike Irish booked back on and when I did not get a call I assumed Irish booked on.”

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.

At time of the dispute, Claimant Paul Sprinkle was assigned to the first trick at New Haven Tower, New Haven, Connecticut, with rest days of Sunday and Monday. On the date of the incident in question, Sunday, October 26, 1997, the Organization claims that the Carrier did not attempt to contact the Claimant to cover a first trick vacancy, which would have accrued to the Claimant as the senior person on that position. An employee junior to the Claimant was moved from his position to cover the vacancy. The Claimant filed a claim on October 27, 1997, for eight hours of pay for not being called. This claim was denied in a letter dated November 4, 1997, by the Superintendent. The Organization's appeal was denied in a letter dated February 10, 1998, by the Division Manager Labor Relations. The final appeal was denied by the Director Labor Relations in a letter dated August 11, 1998.

It is the Organization's position that the Carrier violated Rule 4-F-2 when it allegedly failed to call and then work the Claimant, who was the senior qualified employee. The Organization contends that the Claimant was off duty, on his relief day, and available for working a vacancy in a position which he owns, but instead the Carrier filled with a junior employee. The Claimant asserts that he inquired about the availability of overtime work at 3:00 P.M. on Saturday, October 25, 1997, the day before the vacancy. The Claimant asserts that he was available as he was at home, and his answering machine working, at both times when the Dispatcher allegedly attempted to contact him, but that he did not receive a call or an answering machine message from the Carrier. In a written statement to his Local Chairman the Claimant offered the following explanation as to why the Carrier had not contacted him by phone:

"Boston Chiefs office must have had a phone problem as he asked Charles Fullerton at New Haven East to call me but he only has Art's tricked phone and can't make toll calls. Also the number he said the chief gave him was wrong it had the numbers transposed. Then the Boston Chief had New Haven Motor Storage call Dave Coyle because he could not get out. He should have had Motor Storage call me."

The Carrier maintains that Assistant Chief Train Dispatcher Pete McLeod made two attempts to reach the Claimant by phone at the time of the incident in question. Dispatcher McLeod noted in the Carrier's call record his first attempt to reach the Claimant was made

at 11:40 P.M. on Saturday, October 25, 1997. He made another attempt to reach the Claimant at 3:08 A.M., on Sunday, October 26, 1997. The Carrier asserts that neither call was answered by the Claimant at the times of the calls, or before 3:30 P.M., when junior employee D. Coyle was called to fill the vacancy.

The basic facts in the case at hand are not in dispute. A vacancy occurred on Sunday, October 26, 1997, which was filled by an employee junior to the Claimant. In a personal statement the Claimant offers a possible explanation as to why the Carrier was not able to contact him by alleging that the Carrier had phone problems, and that the wrong phone number was given to the Carrier employee who attempted to contact him. However, the Organization does not offer any evidence of the alleged phone call problems or a wrong phone number other than the Claimant's personal statement. The Carrier's phone call log for that day lists two attempts to contact the Claimant for the vacancy, yet there is no phone call list that refutes the Claimant's statement it was using the wrong phone number in its attempts to contact him.

After careful review of the record, it is the Board's position that the evidence in the case at hand is equally weighted. Based upon the foregoing, we do not find the Organization has met its burden of persuasion. Accordingly, the instant claim must be denied.

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 26th day of April, 2001.