

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36104
Docket No. CL-36456
02-3-00-3-687

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 Intermodal Terminals, Inc.)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12670) that:

The following claim is hereby presented to the Carrier in behalf of Claimant Mr. Paul Campbell.

- (a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 24, 40 and other rules when it failed to call and work Claimant Mr. Paul Campbell for the Extra Gate work, hours 3:00 pm to 6:00 pm, on August 4, 1999 located at the Trail-Van Terminal, Columbus, Ohio and instead assigned and permitted junior Clerk Mr. Ed McElroy to perform gate work duties at the punitive rate of pay.**
- (b) Claimant Mr. Paul Campbell must now be allowed eight (8) hours pay at the appropriate punitive rate of pay for August 4, 1999 on account of this violation.**
- (c) Claimant is qualified was available and should have been worked in accordance with Rules 24 and 40 and other rules.**
- (d) This claim has been presented in accordance with Rule 45 and must be allowed."**

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 facts underlying the instant claim are identical to the facts in Third Division Award 36098. The only difference is the date of the claim and the precise amount of time that the incumbent Intermodal Service Representative performed overtime work contiguous to the incumbent's regular assignment. In this case, the incumbent performed overtime service due to traffic congestion at the inbound gate on August 4, 1999 from 3:00 P.M. to 6:00 P.M.

In Award 36098 the Board held that the Organization failed to meet its burden of proving that the Carrier violated Rules 24 and 40 of the Agreement. For the reasons more fully set forth in that Award we must deny this claim.

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 22nd day of July 2002.