

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36682
Docket No. CL-36362
03-3-00-3-615

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Duluth, Missabe & Iron Range Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-12650)
that:

1. Carrier violated the TCU Clerical Employees' Agreement at the Transportation Department in Proctor on Thursday, November 19, 1998, when it did not fill the tag day of the 11:00 p.m. - 7:00 a.m. Ore Sorter Position.
2. Carrier shall now be required to compensate Ms. M. R. Soliday eight (8) hours pay at the pro rata rate of the Ore Sorter position for Thursday, November 19, 1998 which she would have received had she been properly called to work this position.”

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 Carrier maintains facilities at Duluth and Two Harbors, Minnesota, where iron ore is received in railroad cars, unloaded and subsequently re-loaded into ships for further shipment to steel plants located along the lower Great Lakes. At its Transportation Department in Proctor, Minnesota, the Carrier employs three shifts of employees represented by the Organization assigned to positions titled Ore Sorter. All three shifts of Ore Sorters are seven day positions with five of the six rest days assigned to these positions, incorporated into a relief position, leaving one unfilled or "tag day."

The regular Relief Ore Sorter assignment works Saturday and Sunday, 7:00 A.M. - 3:00 P.M.; Monday and Tuesday, 3:00 P.M. - 11:00 P.M.; and Wednesday, 11:00 P.M. - 7:00 A.M. The third shift Ore Sorter is assigned hours beginning at 11:00 P.M. continuing until 7:00 A.M, Friday through Tuesday, with rest days of Wednesday and Thursday. The third shift Wednesday rest day is incorporated within the relief position, but the Thursday rest day is not incorporated within the Relief Ore Sorter position and that "tag day" is usually filled with an Extra unassigned employee.

Under the terms of Rule 33- Assignment Of Overtime, when the Carrier fills the 1:00 P.M. - 7:00 A.M. Ore Sorter position on Thursdays, it calls "the senior available qualified extra or unassigned employee[s] who do[es] not have forty hours of work that week." By letter dated December 3, 1998, the instant claim was presented on behalf of M. R. Soliday, the senior unassigned employee who did not have 40 hours of work for the week of November 16, 1998, claiming violations of "Rule 33- Assignment Of Overtime, Rule 25- Work Week, Rule 1 -Scope, Rule 12- Extra Work and Short Vacancies and any other applicable rules which may apply of the Clerical Employees Agreement when on Thursday, November 19, 1998, it failed to fill the tag day of the 11:00 p.m.-7:00 a.m." The Carrier concedes that on Thursday, November 19, 1998, it "chose to not fill the rest day of the 11:00 P.M. - 7:00 A.M. Ore Sorter position, which the Carrier often does" but asserts this was no Agreement violation because that assignment was "blanked" on that day.

The case turns on the critical fact that the Organization failed to carry its prima facie burden of proof that anyone performed any Agreement-covered work on the third shift Ore Sorter position on the "tag day" claim date of November 18 - 19, 1998. The facts and issues were not very well developed on the property by either Party, but it is plain that the Organization cannot prevail when the record shows nothing more than that the Carrier blanked a day which was part of a seven-day assignment on a "tag day" for which there was no regular relief assignment to provide relief.

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 18th day of August 2003.