

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36713
Docket No. CL-36971
03-3-01-3-604**

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Burlington Northern Santa Fe Railway

STATEMENT OF CLAIM:

- “1. Carrier violated the Working Agreement when it removed Clerk G. R. Hullum, Teague, Texas, from his regular, 0700 - 1500 hour, assignment and required him to work another position, 1500 - 2300 hour, on February 28, 1998.
2. Carrier must now compensate Clerk G. R. Hullum eight hours pay at the Wage Grade 13 pro rata rate for February 28, 1998.”

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.

Claimant G. R. Hullum held a regular relief position as an Operator in Teague, Texas. The Claimant's assignment allowed him two consecutive rest days, Thursday and Friday. The relief assignment works as follows:

**Saturday 0700 - 1500 Position 101
Sunday - Monday 1500 - 2300 Position 201
Tuesday - Wednesday 2300 - 0700 Position 301**

All positions worked by the Claimant are subject to the Hours of Service Act. Due to a temporary shortage of employees at Teague, Texas, on Friday and Saturday, February 27 and 28, 1998, the Carrier had a vacancy on Position 201, the 3:00 P.M. to 11:00 P.M. shift. Friday, February 27, was the second rest day for the Claimant. The Carrier offered the Claimant overtime on Position 201 (Friday, 3:00 P.M. to 11:00 P.M.). Because these positions are all covered by the Hours of Service Act if the Claimant worked Friday night, he could not cover his 7:00 A.M. - 3:00 P.M. regular assignment on Saturday morning. In order to resolve this problem, the Carrier asked the incumbent of Position 101 to work his assignment on an overtime basis on Saturday, February 28. The Carrier then asked the Claimant to work Position 201 from 3:00 P.M. - 11:00 P.M. The Claimant agreed and was paid eight hours at the punitive rate for February 28 for working outside of his assignment hours. The Carrier covered all of the vacancies without violating the Hours of Service Act. All employees involved in the moves to cover the vacancies were paid on a time and one-half basis.

One pertinent fact in this scenario is that the Claimant was the only employee on the Carrier's roster who was available to fill the second shift assignment on Friday, February 27, 1998, without violating the Hours of Service Act.

On March 13, 1998, the Organization submitted a claim asking for an additional eight hours of pay at the pro rata rate asserting that the Claimant was forced off his regular day shift assignment to the 3:00 P.M. to 11:00 P.M. shift.

The Board reviewed this voluminous record wherein the Organization is claiming a day's pay for the Claimant because he was not allowed to work his regular day job, but instead agreed to work on the 3:00 P.M. to 11:00 P.M. shift at time and one-half. Numerous cases on both sides of this issue were presented by

both parties. At this late stage in railroad arbitration, if one looks hard enough, an Award on every side of the same issue can be found. As a result of the Board's review in this instance, the Board has concluded that the Carrier resolved a difficult situation of not having sufficient manpower available to cover all required jobs without violating the Hours of Service Act. It took a reasonable approach to the situation by rearranging work schedules and paying all employees who were involved on a time and one-half basis. No employee involved here was damaged in any manner. The Board can find no basis on which to challenge the Carrier's actions in this instance.

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 17th day of September 2003.