

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37558  
Docket No. CL-37114  
05-3-02-3-64

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  
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12789) that:

- (1) Carrier violated the TCU Clerical Employees Agreement at the Transportation Department in Proctor on Thursday, January 11, 2001, 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 the senior available extra or unassigned clerical employee, without forty (40) hours of work for the week, eight (8) hours pay at pro rata rate of the Ore Sorter position, or if none are available, the senior available qualified regularly assigned clerical employee, eight (8) hours pay at the punitive rate of the Ore Sorter position for Thursday, January 11, 2001, which he would have received had he 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 Board notes that this dispute is precisely on point, including the same parties and contract language, as the dispute decided by the Board in Third Division Award 36682. In that case the Board held as follows:

"The case turns on the critical fact that the Organization failed to carry 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.... [I]t 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."

In light of the Board's clear decision in that case, the Board sees no basis upon which to sustain the instant 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 20th day of July 2005.