

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38059
Docket No. CL-38443
07-3-04-3-400

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
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-13051) that:

1. Carrier violated the Agreement, specifically Rule 18, on March 28, 2003, when it failed or refused to call Senior Available Employee R. W. Gray to work Position No. 4EJA-169, in lieu of diverting regular Clerk D. M. Wray (assigned to work Position 4EJA-163) to work this assignment.
2. Carrier shall now be required to compensate Clerk R. W. Gray, ID #517754, at the rate he would have earned if called properly (\$151.86), at the punitive rate of \$222.79, for the above violation.”

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 essential facts leading up to this claim are in dispute. The precipitating event, however, is undisputed: on March 28, 2003, R. E. Oaks, who was assigned to Position No. 4EJA-169, marked off under the Family Medical Leave Act and was listed as "sick with pay." The Organization filed the instant claim on March 31, 2003. The essence of the claim was that the Carrier had diverted D. M. Wray from his regularly assigned Position No. 4EJA-163 to work Position No. 4EJA-169, instead of calling the Claimant from the Overtime Board to fill the position.

In its response to the claim on May 29, 2003, the Carrier disputed the Organization's contention that the Agreement had been violated. It agreed that a vacancy had existed on Position No. 4EJA-169, but because Wray was assigned to identical Position No. 4EJA-163, "a management decision was made to have clerk Wray perform the duties of the vacant position." The Organization appealed the claim on June 11, 2003.

On October 6, 2003, the Carrier responded to the Organization's appeal. In that letter, the Carrier denied that any Rule had been violated, because Rule 18 concerns rotating and protection of the Extra Board and does not deal with filling an assignment when the Carrier has exhausted calling procedures for filling a vacancy. Moreover, in contrast to its letter of May 29, 2003, the Carrier asserted that payroll records indicated that Clerk Wray worked and was paid for Position No. 4EJA-163 (his own position) and not Position No. 4EJA-169 (the vacant position) on the date claimed. Attached to that letter, the Carrier provided the Organization with a copy of the confirming payroll records.

The Board searched the record in vain for any evidence presented by the Organization to refute the payroll records supplied by the Carrier. Notwithstanding the fact that the first Carrier officer to respond to the claim (letter of May 29, 2003) believed that Wray had been diverted, the facts of record clearly indicate that he worked on his own position and the Carrier chose not to fill the

Form 1
Page 3

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position vacated by Oaks. Under the circumstances, the Board finds no basis upon which to sustain 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 25th day of January 2007.