

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 36338  
Docket No. CL-36773  
02-3-01-3-244

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(CSX Sea Land Terminals, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12733) that:

I. The following claim is hereby presented to the Company in behalf of Claimant Mr. E. D. McElroy.

- (a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 5, 24, 40 and other rules when it failed to call and work Claimant Mr. E. D. McElroy for the Intermodal Service Representative Position, Symbol 152, hours 3:00 pm to 6:00 pm, on October 13, 1999 located at the Intermodal Terminal, Columbus, Ohio and instead assigned and permitted junior employee Mr. W. L. Foucht to perform this work.
- (b) Claimant Mr. E. D. McElroy must now be allowed eight (8) hours pay at the appropriate punitive rate of pay for October 3, 1999 on account of this violation.
- (c) Claimant was available to work the Intermodal Service Representative Position and should have been called in accordance with Rules 24, 40 and other rules.
- (d) This claim has been presented in accordance with Rule 45 and must be allowed.

II. The following claim is hereby presented to the Company in behalf of Claimant Mr. P. R. Campbell.

- (a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 5, 24, 40 and other rules when it failed to call and work Claimant Mr. P. R. Campbell for the Intermodal Service Representative Position, Symbol 151, hours 3 pm to 6 pm on October 15, 1999 located at the Intermodal Terminal, Columbus, Ohio and instead assigned and permitted junior employee Mr. E. D. McElroy to perform this work.
- (b) Claimant Mr. P. R. Campbell must now be allowed eight (8) hours pay at the appropriate punitive rate of pay for October 15, 1999 on account of this violation.
- (c) Claimant was available to work the Intermodal Service Representative Position and should have been called in accordance with Rules 24, 40 and other rules.
- (d) This claim has been presented in accordance with Rule 45 and must be allowed.

III. The following claim is hereby presented to the Company in behalf of Claimant Mr. P. R. Campbell.

- (a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rule 5, 24, 40 and other rules when it failed to call and work Claimant Mr. P. R. Campbell for the Intermodal Service Representative Position, Symbol 151, hours 3 pm to 5:30 pm on November 2, 1999 located at the Intermodal Terminal, Columbus, Ohio and instead assigned and permitted junior employee Mr. E. D. McElroy to perform this work.

- (b) Claimant Mr. P. R. Campbell must now be allowed eight (8) hours pay at the appropriate punitive rate of pay for November 2, 1999 on account of this violation.
- (c) Claimant was available to work the Intermodal Service Representative Position and should have been called in accordance with Rules 24, 40 and other rules.
- (d) This claim has been presented in accordance with Rule 45 and must be allowed.

IV. The following claim is hereby presented to the Company in behalf of Claimant Mr. P. R. Campbell.

- (a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 5, 24, 40 and other rules when it failed to call and work Claimant Mr. P. R. Campbell for the Intermodal Service Representative Position, Symbol 152, hours 3 pm to 6 pm on November 18, 1999 located at the Intermodal Terminal, Columbus, Ohio and instead assigned and permitted junior employee Mr. W. L. Foucht to perform this work.
- (b) Claimant Mr. P. R. Campbell must now be allowed eight (8) hours pay at the appropriate punitive rate of pay for November 18, 1999 on account of this violation.
- (c) Claimant was available to work the Intermodal Service Representative Position and should have been called in accordance with Rules 24, 40 and other rules.
- (d) This claim has been presented in accordance with Rule 45 and must be allowed.

V. The following claim is hereby presented to the Company in behalf of Claimant Mr. P. R. Campbell.

- (a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 5, 24, 40 and other rules when it failed to call and work Claimant Mr. P. R. Campbell for the Intermodal Service Representative Position, Symbol 152, hours 3 pm to 5 pm on November 8, 1999 located at the Intermodal Terminal, Columbus, Ohio and instead assigned and permitted junior employee Mr. W. L. Foucht to perform this work.
- (b) Claimant Mr. P. R. Campbell must now be allowed eight (8) hours pay at the appropriate punitive rate of pay for November 8, 1999 on account of this violation.
- (c) Claimant was available to work the Intermodal Service Representative Position and should have been called in accordance with Rules 24, 40 and other rules.
- (d) This claim has been presented in accordance with Rule 45 and must be allowed.

VI. The following claim is hereby presented to the Company in behalf of Claimant Mr. P. R. Campbell.

- (a) The Carrier violated the Clerks' Rules Agreement effective July 1, 1979, particularly Rules 5, 24, 40 and other rules when it failed to call and work Claimant Mr. P. R. Campbell for the Intermodal Service Representative Position, Symbol 152, hours 3 pm to 6 pm on November 22, 1999 located at the Intermodal Terminal, Columbus, Ohio and instead assigned and permitted junior employee Mr. M. G. Martin to perform this work.
- (b) Claimant Mr. P. R. Campbell must now be allowed eight (8) hours pay at the appropriate punitive rate of pay for November 22, 1999 on account of this violation.

- (c) Claimant was available to work the Intermodal Service Representative Position and should have been called in accordance with Rules 24, 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.

In this docket the Carrier failed to file an Ex Parte Submission, and its failure to do so leaves the positions, assertions and proofs of the Organization, which adequately support its claim that the Agreement was violated, unchallenged and uncontroverted. The claim must therefore be sustained as presented.

(See Third Division Awards 14891, 24020, 24021, 24037, 24352, 26525, 30270 and 31793 et al, for a similar conclusion when the Carrier failed to file a Submission with the Board.)

AWARD

Claim sustained.

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**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of December 2002.