

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Award No. 5090  
Docket No. 5079  
04-4-02-4-4

The Fourth Division consisted of the regular members and in addition Referee Robert L. Hicks 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 that:

1. Carrier violated the TCU Ore Dock Employees Agreement at the Ore Docks in Two Harbors on Friday, November 17, 2000, when it required and/or permitted Mr. Tom N. Simonsen to work the 11:00 p.m. shift as a Mechanic, on overtime.
2. Carrier shall now be required to compensate G. J. Surtala eight (8) hours pay at the pro rata rate of the Mechanic Position for Friday, November 17, 2000, which he would have received had he been properly called.”

FINDINGS:

The Fourth 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 Claimant was an extra unassigned employee who stood to be called for the 11:00 P.M. vacancy. The Claimant was called at 6:26 P.M. A message was left on his answering machine as well as calling him on his pager. The Claimant called in at 6:30 P.M. for the vacancy but was told by the employee responsible for filling vacancies that the vacancy had been filled by using a regular assigned employee at the overtime rate.

The Carrier violated the Agreement, particularly Rule 10(c) 3 which requires the Carrier to wait ten minutes after the call to the pager.

The Carrier did not wait the ten minutes. If it had, the Claimant would have filled the vacancy at the straight time rate.

The Carrier went to great lengths to show just how many calls the Claimant had missed. Those missed calls have no bearing on the incident before the Board.

### AWARD

Claim sustained.

### 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 Fourth Division

Dated at Chicago, Illinois, this 3rd day of June 2004.