

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31461
Docket No. CL-32088
96-3-94-3-450

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
(GL-11080) that:

(a) The Carrier violated the Rules Agreement effective September 1, 1976, as amended and revised, particularly Appendix E - Extra List Agreement when on August 3, 1991 John McNamee was on vacation and M. Famiglietti was off sick. S. Wilbur worked job on overtime 5:30 A.M. to 2:00 P.M. and D. Millar was not called.

(b) Claimant D. Millar is qualified, senior and should have been called.

(c) Claimant D. Millar now be allowed eight (8) hours overtime to satisfy this violation.

(d) Claim filed in accordance with Rule 7-B-1 and should 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 waived right of appearance at hearing thereon.

On August 3, 1991 a vacancy existed on the 5:30 A.M. to 2:00 P.M. shift at the Carrier's Baltimore Airport office. The Carrier had two positions that worked the above hours at the airport. On the date of the claim the incumbent of 3BWT-1 marked off sick. Position 3BWT-6

had August 3 as a rest day. The regular relief Clerk that filled Position 3BWT-6 on the rest days was on vacation.

On the date in question the Carrier elected to fill only one of the two vacancies. The Organization takes the position that the carrier filled the 3BWT-1 position. The Carrier takes the position it filled position 3BWT-6. The Carrier filled the vacancy with the incumbent of position 3BWT-6. The Organization argues that the Claimant should have been called to fill the vacancy.

Unfortunately, in the case at issue the Board is unable to resolve the dispute in light of the fact that we have an irreconcilable dispute in facts as to which position was filled. Without a factual showing sufficient to make a ruling the claim must be dismissed.

AWARD

Claim dismissed.

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 April 1996.