

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31796
Docket No. CL-32006
96-3-94-3-368**

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11062) that:

The following claim is presented to the Carrier in behalf of Pamela Michaux, Crew Dispatcher, Symbol Number IWTCD-3, tour of duty 11:00 p.m. to 7:00 a.m. with rest days of Tuesday and Wednesday and a rate of pay of \$13.21 per hour.

The Carrier did violate the Northeast Corridor Clerical Agreement between Amtrak and TCU effective September 1, 1976, and as revised and amended particularly Appendix E - Article 6, 2-A-1 and 3-C-1 as well as others.

On Monday April 27, 1992, Mr. Liverette marked off his position which is crew dispatcher 7:00 a.m. to 3:00 p.m. This position was then blanked, Ms. Michaux was available for this position, was already on the property, had a prior right to this overtime, but was not used.

Claimant now to receive \$158.52, which is the amount of her loss because of the Carrier's violation of the Agreement.

Claim is presented to the Carrier in accordance with Rule 7-B-1."

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 occupant of the regular 7:00 A.M. to 3:00 P.M. Crew Caller assignment marked off sick on April 27, 1992. The Carrier first attempted to call two off-duty Crew Callers to work the vacancy, but without success. It did not ask the Claimant, who was scheduled to go off duty at 7:00 A.M., to double over onto the vacancy. Instead, it diverted the occupant of the relief 7:00 A.M. - 3:00 P.M. Crew Caller assignment to the vacancy and blanked the relief assignment for the shift.

The Organization argues that its Agreement does not permit the diversion of employees from their regular assignments to avoid the payment of overtime. It argues that on this property, Awards 3 and 4 of Public Law Board No. 5022, found this type of diversion to be a violation of the Agreement.

The Board reviewed Awards 3 and 4 with care, and does not find the conclusion reached by Public Law Board No. 5022 to be in palpable error - that in overtime situations the improper diversion of another employee to avoid payment of overtime would effectively negate the overtime provisions of the Agreement. Awards 3 and 4 must be accepted as precedent, and given appropriate weight, in the claim now before this Board. They will be followed here. The claim will be sustained as presented.

AWARD

Claim sustained.

Form 1
Page 3

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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 1996.