

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33397
Docket No. CL-34134
99-3-97-3-656

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11840) that:

- (a) The Carrier violated the July 21, 1972, as revised, Amtrak-Corporate Clerical Rules Agreement, particularly Rules 7, 14, Memorandum No. 2, Item 4 and other rules, as well as Article XIV of the September 6, 1991 Mediation Agreement, when it failed to call and work Claimant Paulsen for position of Ticket-Clerk, hours 9:30 a.m. - 6:30 p.m., location at Albany/Rensselaer Station, Rensselaer, N.Y., on March 31, 1996 (vice J. Brown) and instead allowed and permitted clerical employee Steve Leonardo to cover same.
- (b) Claimant Paulsen should now be allowed eight (8) hours overtime pay based on the pro-rata daily rate of \$123.68 for March 31, 1996, on account of this violation.
- (c) Claimant is qualified, was available and should have been called and worked in accordance with the provisions of the Rules Agreement.
- (d) This claim has been presented in accordance with Rule 25 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 were given due notice of hearing thereon.

On March 31, 1996, Employee J. Brown reported to work as a Ticket Clerk At the Albany/Rensselaer Station, Rensselaer, NY. His normal tour of duty was from 9:30 A.M. to 6:30 P.M. At 11:00 A.M. Mr. Brown became ill and went home sick. Carrier called Employee S. Leonardo (tour of duty from 2:00 P.M. to 10:00 P.M.) to come in two hours early (at noon) and paid him two hours' overtime pay.

The Organization maintains that the Carrier had advanced notice of Mr. Brown's illness, and should have called Claimant to complete the shift, rather than calling Mr. Brown to come in two hours early.

The Carrier asserts that its advanced notice was minimal, and that, since Mr. Leonardo was senior to Claimant, he was the proper person to call for the two hours' coverage needed. The Carrier insists that the applicable contract language in this case is Article XIV, (d), of the 1991 Mediation Agreement. That provision reads as follows:

"Under the Corporate Agreement, when a vacancy is caused by an unexpected failure to appear by an employee, an employee working at the location can have their tour of duty extended not more than two hours to cover the unexpected vacancy; such extension of the regular tour of duty will be assigned to employees working in the same category, if available. The employee whose tour of duty is extended will be paid the overtime rate for actual time worked in excess of their regular tour of duty. If the tour of duty is extended more than two hours existing rules will apply."

A review of this record indicates that Carrier did not violate the Agreement. Carrier did not have advance warning that Mr. Brown would take ill in the middle of his tour of duty and leave. Accordingly, Article XIV, Section (d) of the Mediation Agreement applies. Further, Rule 14 (f) states:

“If overtime is necessary before or after assigned hours, employees regularly assigned to the job category at the location shall be given preference in seniority order; the same principle shall apply to working extra time on holidays. Vacancies, including vacancies on rest day relief positions not filled by (e) above, shall be filled on a day-to-day basis in seniority order by employees regularly assigned to the job category at the location and who are available.”

Claimant was not properly the employee who should have been called. Mr. Leonardo was the “employee regularly assigned to the job category at the location.” Accordingly, the claim must be denied.

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 13th day of July 1999.