

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33398
Docket No. CL-34135
99-3-97-3-663**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11845) that:

Please consider this as a claim of the District 1089 Protective Committee on behalf of R. E. Conti, seniority date August 29, 1979. The Carrier violated the current Rules Agreement between the National Railroad Passenger Corporation and the Transportation Communications International Union, partially but not limited to Appendix E (Extra Board Agreement) Articles 5, 6, and 7.

On Wednesday, August 9, 1995, position Gateman, Symbol GU811, hours 3:00 p.m. – 11:30 p.m., location South Station was vacant because the former incumbent E. Mazzio had successfully applied to another position. The Carrier then allowed a hold-down on Position GU811, a position not known to be of more than five (5) days, to C. Guthrie who had requested a hold-down on this position.

Therefore, claim is made on behalf of R. E. Conti, seniority date August 29, 1979, for eight (8) hours pay at the punitive rate for each of the following dates C. Guthrie was allowed to work this position on a hold-down basis, August 9, 11, 14, and 16, 1995, a total of thirty-two (32) hours. R. E. Conti was the senior qualified employee available and willing to work this position but was not called and used.

This claim is presented in accordance with the current Rules Agreement, is in order, 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.

The contract language most relevant to the instant dispute is Article 8, Section (A) of the Extra Board Agreement. That provision reads as follows:

“(A) Known vacancies of more than five working days but less than thirty (30) calendar days’ duration, including absences of vacationing employees, will be assigned on a hold-down basis to the senior qualified, extra or regular, employee making written application for same in the territory whose position is under the jurisdiction of the Extra Board involved.”

The essential facts of this case are not in dispute. The vacancy at issue was initially thought to be of six working days’ duration, and, in accordance with the provisions of Article 8, Section A, above. Accordingly, it could properly be assigned on a hold-down basis. Claimant’s seniority was greater than the employee assigned the vacancy.

However, nowhere on this record has the Board found any evidence that Claimant actually made written application for the hold-down. In the absence of such an application, the Carrier’s assignment of Mr. Guthrie was not in violation of the Agreement.

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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.