

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 33400  
Docket No. CL-34159  
99-3-97-3-665

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-11842) 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, particularly but not limited to Appendix E (Extra Board Agreement) Articles 5, 6, and 7.**

**On Sunday, July 30, 1995, position BG818, hours 8:00 a.m. - 6:00 p.m., location South Station Baggage Room, was vacant due to the incumbent J. O'Connor had not returned to his position following a hold down. E. Mazzio, Seniority date August 13, 1985, was called and permitted to work this position at the punitive rate of pay, with no call being made to R. E. Conti.**

**Therefore, claim is made on behalf of R. E. Conti, Seniority date August 29, 1979, for twelve (12) hours pay at the punitive rate (nine (9) hours plus an additional three (3) hours account of late train - #448). 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.

At the crux of this case is Article 3(c) of the Agreement between the Parties. That states in pertinent part:

. . . Management will verify all failures to answer a work assignment telephone call with a "Verified Don't Answer" from the telephone company, or, if possible, have another employee, preferably an agreement employee, verify that the call was made.

Claimant has stated that he was available on the date and time in question. The Carrier has provided no business record to confirm that it called Claimant without a response. Rather, the Carrier belatedly submitted a statement from the Acting Supervisor at that time asserting that he had called Claimant.

The procedure for calling Claimant and the method for recording an employee's failure to answer are well defined. Carrier's Officer did not follow that procedure. Thus there is no evidence on this record to indicate that Claimant was actually called on the date in question. The claim is sustained.

**AWARD**

Claim sustained.