

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33984
Docket No. CL-34776
00-3-98-3-427**

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 (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12066) that:

- (a) Please consider this as a claim of the District 1089 Protective Committee on behalf of Linda Ignacio. The Carrier has violated the current Rules Agreement between the National Railroad Passenger Corporation and the Transportation - Communications International Union, particularly but not limited to Article III, Section 3, para (b) of the September 21, 1994 Agreement.**
- (b) By Special Notice included in Northeast Corridor (NEC) Seniority District Four Bulletin 96-13 the Carrier advertised to TCU employees within NEC Seniority District Four a vacancy in position TA-801, Lead Ticket Clerk, Route 128 Station - Westwood, MA. In spite of Ms. Ignacio's employment history, job experience and qualifications the Carrier arbitrarily and capriciously awarded this position to Sandy Stewart, an employee whose seniority is held in the Eastern Region, Seniority District Number VII.**
- (c) Ms. Ignacio was one of several employees submitting a job opportunity application for this position. Ms. Ignacio is presently the incumbent of position TC-411, Relief Ticket Clerk, New London, CT and has worked as a Ticket Clerk for approximately seven years during which time as an Extra Board Employee, Ms. Ignacio was required to cover the positions of Lead Ticket Clerk, New London and Kingston as-well-as the Accounting/Ticket Clerk's position in Providence Station. Ms. Ignacio's job experience and**

qualifications more than parallel the primary duties stated in this notice, it outlines her career thus far with this company and as provided for in our Agreement she should have been shown preference in being awarded this position.

- (d) Therefore claim is made on behalf of Linda Ignacio for eight (8) hours pay at the applicable rate, plus \$4.00 (Lead Clerk's differential) for each day Ms. Ignacio is held off this position beginning Monday, August 26, 1996 and continuing thru Friday, October 18, 1996.
- (e) This claim is presented in accordance with the current Rule 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 Claimant was one of several employees submitting a job opportunity application for a vacancy in TA-801, Lead Ticket Clerk, Route 128 Station, Westwood, Massachusetts, a NEC Seniority District Four position. This position was advertised by Special Notice included in the Northeast Corridor (NEC) Seniority District Four Bulletin 96-13. The position was awarded to Sandy Stewart whose seniority is held in the Eastern Region, Seniority District Number VII.

The Organization asserts that the Claimant's job experience and qualifications were sufficient to meet the requirements of the position and that she should have been

shown preference in being awarded this position. The Organization's claim dealing with a partially excepted position having been given to a clerical employee from a seniority district other than that in which the position existed was denied in a letter by the Customer Services Manager dated October 22, 1996. This first level denial letter referenced a previous declination on June 14, 1995, as the basis for declining the current claim, but offered no reason for denying the claim. The Organization argues that the declination was thus procedurally defective. It notes that the Carrier offers no reason why the Claimant's claim is without merit in this declination. In support of its position, the Organization cites Rule 7-B-1:

"RULE 7-B-1 - CLAIMS FOR COMPENSATION

- (A) All claims or grievances must be presented in writing on behalf of the employe involved, to the officer of the Corporation authorized to receive same, within sixty (60) days from the date of occurrence on which claims or grievances are based, except:**

(2) When a claim for compensation alleged to be due is based on an occurrence during a period employe was out of active service due to sickness, vacation, leave of absence, suspension or reduction in force, it must be made, in writing, within sixty (60) calendar days from the date the employe resumes duty.

When claims or grievances have been presented in accordance with this Paragraph (a), including exceptions (1) and (2), and are denied, the Corporation shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing, of the reasons for such disallowances. If not so notified, the claim or grievance will be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Corporation as to other similar claims or grievances.

- (B) A claim or grievance denied in accordance with Paragraph (a) shall be considered closed unless it is listed for discussion with the**

designated Corporate officer by the employee or his duly accredited representative within sixty (60) days after the date it was denied. A claim or grievance listed ten (10) days prior to the date of a scheduled monthly meeting with the Local Committee will be discussed at such meeting. When a claim or grievance is not allowed the designated Corporate Officer will so notify, in writing, whoever listed the claim or grievance (employee or his duly accredited representative) within sixty (60) days after the date the claim or grievance was discussed of the reason therefor. When not so notified the claim will be allowed."

The Organization alleges that the Carrier spokesperson did not adhere to the requirements placed upon the Carrier in the Rule above and that nothing in the Rule at bar gives the Carrier the right unilaterally to decide what is, or is not, an acceptable claim. Prior to September 2, 1994, the Carrier had an absolute right to appoint an individual to a partially excepted position. Implementation of the Agreement on September 2, 1994, changes the Carriers position. Paragraph (b), in particular, makes clear the Agreement expectations of partially excepted positions:

"ARTICLE III - RULE MODIFICATIONS
SECTION 3 - PARTIALLY EXCEPTED POSITIONS

- (A) When a partially excepted position is vacant for more than 90 days, the partially excepted status will be automatically eliminated.
- (B) Preference will be given to individuals actively employed in the clerical craft in the seniority district when filling partially excepted and PAD positions. If an employee on a full time regular position becomes unable to hold a full time regular position and is senior to an employee holding a partially excepted or PAD position, the partially excepted or PAD position will be re-posted. When the position is re-posted, it will be filled by an employee who would not otherwise be furloughed or the position may be abolished. The incumbent may be held on the position without penalty until the position is filled."

While the Board does not find that the denial was procedurally defective, we do find that the Carrier has not shown adequate reason for awarding the position in question to an employee other than the Claimant. Accordingly, the Organization has more than met its burden of persuasion.

AWARD

Claim sustained.

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 28th day of March, 2000.