

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33986
Docket No. CL-34790
00-3-98-3-434**

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-12068) that:

Claim of the District Protective Committee is hereby presented to the Carrier in behalf of Claimant W. Dalka account the Carrier violated the National Railroad Passenger Corporation (Amtrak) Clerks’ Rules Agreement particularly Rules 2, 7, 14 and other Rules, as amended by the September 2, 1994 Agreement when it failed to properly called for this position on second shift. He was the senior available employee and the Supervisor passed him by, and used employee Paul Donius who marked off sick at 11:30 P.M. on January 26, 1997. Mr. Dalka should have been called in accordance with the provisions of Rule 14 and was available.

Claimant W. Dalka now be allowed eight (8) hours pay at the appropriate punitive rate for January 27, 1997 for this violation of his seniority rights. Claimant was senior available employee, should have been properly called and worked, was available and did not receive a proper call.

This claim is 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 January 27, 1997, the Claimant was working a regular relief position at Depew-Buffalo, New York. He was not called to fill a vacancy on the date of the incident. Instead junior unassigned Clerk P. Donius was assigned the work at the straight time rate rather than the Claimant who would have been paid the overtime rate. The claim alleges that the Claimant was the senior person available for the work on January 27, 1997, and that he should have been called and worked. The Organization seeks eight hours pay at the appropriate punitive rate. The initial claim of February 22, 1997, was denied as were the succeeding denials including an appeal to the highest Carrier Officer designated to handle claims and grievances.

The Organization alleges that the Carrier violated Rules 2, 7, 14 and other Rules of the Agreement when it erroneously used Clerk P. Donius who had marked off sick the previous night. The Organization asserts that the mark-off made P. Donius ineligible to be called and unavailable for work for the 24 hour period commencing 11:30 P.M. on January 26, 1997.

The Organization asserts that by failing to call the Claimant for the 3:30 P.M. - 11:30 P.M. vacancy at the Depew Station the Carrier violated the Agreement by failing to adhere to Rules 2, 7 and 14 of the Agreement. Rule 2 establishes procedures for seniority calculation and preference. Rules 7 and 14 read in pertinent part as follows:

“RULE 7 - SHORT VACANCIES

- (a) Vacancies of thirty (30) calendar days or less duration are considered “short vacancies” and may be filled without bulletining.

NOTE: When there is reasonable evidence that a vacancy will extend beyond the thirty (30) calendar days time limit, it shall be *bulletined as provided in Rule 6.*

When short vacancies are filled, they shall be filled in the following order of precedence:

- (1) *By calling the senior qualified unassigned employee available at the straight time rate not then filling some other position. (Such unassigned employee not having claim to work more than forty (40) straight time hours in his workweek.)*
- (2) *By using the senior qualified regularly assigned employee at the location who has served notice in writing of his desire to work such assignment for the duration of the vacancy."*

"RULE 14 - OVERTIME

- (a) Except as otherwise provided, time worked in excess of eight (8) hours, exclusive of the meal period, on any workday shall be considered overtime, and paid for on the actual minute basis at time and one-half rate.

NOTE: Regular relief assignments established under Rule 12, Section (b) (5) will be assigned to afford incumbent thereof at least eight (8) hours off duty between work periods. The provisions of Rule 14, Section (a) shall not apply to incumbents of regular relief assignments who may work more than eight (8) hours on any workday account following their assignment from position to position.

- (b) Work in excess of forty (40) straight time hours in any workweek shall be paid for at time and one-half the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from the unassigned list.

- (j) Regularly assigned employees who absent themselves from their assigned position shall not be considered available for any assignment for overtime for period twenty-four (24) hours from the starting time of the position to which assigned."

The Organization asserts that the Claimant clearly had seniority over the individual used as specified in Rule 2 - Seniority. It also asserts that Rule 14 - Overtime establishes the Claimant's right to the overtime and that he should have been used. The Organization also cites other Rules, but key to its allegations of Agreement violation is Rule 12 - Workday and Workweek.

"RULE 12 - WORKDAY AND WORKWEEK

- (b) 8) The term "workday" shall mean a twenty-four (24) hour period beginning with the start of the tour of duty of an assignment."

The Organization notes that Paragraph (b)-(8) defines workday as "a twenty-four (24) hour period beginning with the start of the tour of duty of an assignment." It asserts that the definition of workday applies to both assigned and unassigned employees. The Organization points out that Mr. Donius refused work at 11:30 P.M. on Sunday, January 26, 1997, due to illness. It maintains that he was thus disqualified from filling the vacancy on January 27, 1997.

The Organization seeks eight hours pay at the appropriate punitive rate for January 27, 1997, for violation of the seniority rights of the Claimant.

The Carrier asserts that no provision of Rule 2 would apply in the instant case as the Rule pertains only to the establishment of seniority which was not an issue in this case. The Carrier also denies that it violated Rule 7, because the Rule specifically states that the procedure for the filling of vacancies is to call "the senior qualified unassigned employee available at the straight time rate" of pay, as long as that employee has not worked more than 40 straight time hours. It points out that Monday is the first day of the week for an unassigned employee. The Carrier also takes exception to the Organization's assertion that Rule 14 was violated as the work performed was not an overtime assignment, but the filling of a short vacancy at the straight time rate of pay.

The Carrier further states that paragraph (j) of Rule 14 makes it clear that the 24 hour penalty applies solely to regularly assigned employees and that Donius is not a regularly assigned employee.

We find that the Carrier's position in this matter is persuasive. The contract language regarding filing of short vacancies is clear. Because Donius was the senior qualified employee available at the straight time rate, the Carrier properly called him in lieu of the Claimant. Moreover, Rule 14(j) makes no reference whatsoever to unassigned employees. Rather, it confines its restrictive penalty only to regularly assigned employees. There is no evidence on this record to support the allegation that, under the conditions present here, the Carrier was in any way in violation of the Agreement.

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 28th day of March, 2000.