

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33988
Docket No. CL-34968
00-3-98-3-661**

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 (NEC-1497) in behalf of Clerk Beverly Gulstone:

- (a) The Carrier violated the Amtrak Clerical Agreement, particularly Appendix E, Articles 5, 6, and 4-C-1, when, on December 31, 1996, the Carrier diverted Cashier, Roderick Jones, to fill vacant Ticket Clerk Position (1:30 P.M. - 10:00 P.M.). Claimant, being on rest day, was senior, qualified, and available, and should have been called to fill this vacancy.
- (b) Claimant should now be allowed eight (8) hours at time and one-half at the pro rata rate of pay for December 31, 1996, to satisfy this claim.
- (c) Claim filed in accordance with Rule 25 and should be allowed as presented.”

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 December 31, 1996, Extra Board employee Karen Cleveland was scheduled to fill a Ticket Clerk vacancy that occurred from 12:00 noon to 8:00 P.M. at Amtrak's Wilmington, Delaware Station. She did not report to work as scheduled, but called after her shift had begun to explain that she was at the hospital with her sick brother and would report to work after her brother was treated and released.

Cashier/Accounting Clerk Roderick Jones was asked to assist in selling tickets on the claim date. At the time of the incident the Claimant was regularly assigned to a Ticket Clerk position at the Wilmington, Delaware Station. She was not called to fill the Ticket Clerk position when Ms. Cleveland called to tell her Supervisor conditions were such that she would be able to report to work. A claim submitted by the Organization on February 24, 1997, was denied as were the subsequent appeals. The Director of Labor Relations, the highest ranking Carrier Officer designated to handle claims and grievances denied the claim in a letter dated December 23, 1997.

The Organization alleges the Carrier violated the Agreement when it diverted employee R. Jones from his Cashier/Accounting Clerk assignment to work the vacant 12:00 noon to 8:00 P.M. Ticket Clerk position extra employee Karen Cleveland had been called to fill. The Organization asserts that regardless of the activity that happened on the day of the incident, available, senior and qualified Extra Board employee Claimant B. Gulstone, who was the next senior employee should have been called to fill the vacancy. Further, the Organization disputes the Carrier's position that the vacant Ticket Clerk position had been blanked as it was assigned to employee K. Cleveland. The Organization cites Articles 5 and 6 which read in pertinent part:

ARTICLE 5

"... in the event the relief employee is absent, the vacancy will first be offered to the incumbent of the position being relieved. Should the incumbent refuse overtime it will then be offered to the senior, available, qualified extra or regular employee in the territory whose position is protected by the extra board involved."

ARTICLE 6

“(A) Regular and extra work assignments not covered by Article (5) above will be offered to the senior, qualified, available extra or regular employee in the territory whose position is under the jurisdiction of the extra board involved.”

The Organization asserts that when employee K. Cleveland called in at 3:00 P.M. reporting she would not be coming in to work on the day of the incident, the Carrier should have called in the Claimant to cover the vacancy as more than one-half of the shift remained. Instead, the Carrier diverted employee R. Jones from his Cashier/Accounting Clerk position to perform the work of the vacancy.

The Carrier’s position in the case at hand is that on the date of the incident employee K. Cleveland offered assurances she would be reporting to her position, but would be late. Nearly half way through her shift she called to report she would not be coming in. It was necessary for Cashier/Accounting Clerk R. Jones to assist in selling tickets on the claim date during the afternoon on the day of the incident.

Considering the circumstances of the day in question, it was reasonable for the Carrier to utilize Cashier/Accounting Clerk R. Jones to sell tickets in the afternoon during his regular tour of duty when employee K. Cleveland unexpectedly did not report to work nearly half way through her shift. The job position bulletin makes clear he is expected to fulfill the role of a Ticket Clerk when required.

The Organization has not provided evidence that the Carrier does not have the right to blank a position and utilize employee R. Jones to sell tickets, regardless of the Organization’s assertion that it is not common to the Cashier/Accounting position. The Board does not find that the Carrier violated the Agreement.

AWARD

Claim denied.

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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.