

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 34059  
Docket No. CL-34791  
00-3-98-3-440**

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

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

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Organization (GL-12069) that:**

**I am filing claim on behalf of Mr. John Murphy, third trick train director, Waltham, MA. This claim is for eight hours at the rate of time and one-half, July 8, 1996.**

**Carrier violated the Agreement when it used a junior employee to cover third trick position at Waltham Tower, MA, and paid the junior employee at the rate of Train Dispatcher.**

**Rules violated are Appendix E, Articles #3, #4, and #5 in their entirety.”**

**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 Monday, July 8, 1996, a vacancy existed on the third trick at Waltham Tower, Waltham, Massachusetts. An Extra Board Block Operator/Train Director/Train Dispatcher who had not worked 40 hours in the workweek was called to work the position. On August 21, 1996, the Organization filed the instant claim. In its denial of the claim the Carrier stated that the Extra Board employee had just started his new workweek as an Extra Board Operator and was entitled to work the tower position at straight time before Amtrak was required to pay the overtime rate. In a later denial the Carrier also pointed out that the employee called was the senior available unassigned Operator who was starting his new workweek and was entitled to be called for the vacancy at issue.

In reviewing this case, the Board notes that Appendix E, Articles (A) (1) and (3), are directly applicable. Those Articles read as follows:

- “(1) When two or more vacancies having the same starting time on the same day are open, the senior qualified extra employee will be given his preference of choosing the position he desires to work, provided the other extra employees are qualified for the remaining vacancies at the pro rata rate. . . .
- (3) In the allocation of work protected by these extra boards, extra employees, first out, whose use would involve payments at overtime rates will not be used so long as there are employees available to perform the work at the straight-time rate.”

In its argument, the Organization has not shown that the employee selected over the Claimant was unqualified for the vacancy to which he was assigned. Accordingly, the Carrier did not violate the Agreement when it used an employee senior on the Extra Board list (if junior to the Claimant) whose assignment would not require the Carrier to pay overtime.

### **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 25th day of May, 2000.**