

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35196
Docket No. CL-35403
00-3-99-3-280**

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-12333) that:

I. Claim of the System Committee of the TCU (AM999):

- (a) In behalf of Claimant L. Jones 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 call and work Claimant on December 4, 1997 at the Rochester Station, Rochester, NY. Claimant was available for work at this Station on first shift from 7:30 a.m. to 4:00 p.m. and Mr. Jones was not properly called for this position on first shift as baggage person/ticket clerk. He was the senior available employee and the Supervisor passed him by, and used a junior employee. Mr. Jones should have been called in accordance with the provisions of Rule 14 and was available for this Baggage position. Supervisor Muscat offered this overtime to junior clerk Perry on December 3, 1997 and did not blank employee Vair’s vacancy.**
- (b) Claimant L. Jones now be allowed eight (8) hours pay at the appropriate punitive rate for December 4, 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.

- (c) This Claim is presented in accordance with Rule 25 and should be allowed.**

II. Claim of the System Committee of the TCU (AM999):

- (a) In behalf of Claimant L. Jones 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 call and work Claimant on January 1, 1998 at the Depew Station, Buffalo, NY. Claimant was available for work at this Station on third shift from 11 p.m. to 8:00 a.m. and Mr. Jones was not properly called for this position on the third shift as mail/baggage clerk. He was the senior available employee and the Supervisor passed him by, and used a junior employee. Mr. Jones should have been called in accordance with the provisions of Rule 14 and was available for this Baggage position. Supervisor Muscat offered this overtime to unavailable clerk Tudor. On January 1, 1998 clerk Tudor owned position at Niagara Falls from 3:00 p.m. to 12 midnight and was paid accordingly for this position.**
- (b) Claimant L. Jones now be allowed eight (8) hours pay at the appropriate punitive rate for January 1, 1998 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.**

- (c) 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 the dates of the incidents for which the Organization has filed a claim on behalf of L. Jones against the Carrier for an alleged violation of the Agreement, the Claimant was assigned to a regular Ticket Clerk position at Rochester, New York, with assigned hours of 11:30 P.M. to 8:00 A.M. and rest days of Wednesday and Thursday. On Thursday, December 4, 1997, the incumbent Ticket Clerk at Rochester, New York, whose regular hours are from 7:30 A.M. to 4:00 P.M., marked off sick. Baggage man M. Perry, an employee junior to the Claimant, was held over one hour past his normal quitting time to work a baggage train that was running late.

On Thursday, January 1, 1998, Ticket Clerk Tudor, who is senior to the Claimant, was available to work overtime due to the blanking of his regular position at Niagara Falls, New York, because of the holiday. On that date the 11:30 P.M. to 8:00 A.M. mail/baggage position at Buffalo, New York, became vacant when the assigned Baggage man marked off sick. Tudor, who is senior to the Claimant was called at the overtime rate to work the position. The Organization alleges that the Claimant should have been called on both of these occasions. On December 30, 1997, and January 5, 1998, the Organization filed claims, which were denied by Supervisor D. S. Muscat on February 26, and March 4, 1998. Subsequent appeals were denied as well.

The Organization alleges that a short vacancy existed on the two dates in question, which it asserts that, according to the guidelines in **RULE 7 - SHORT VACANCIES**, should have accrued to the Claimant. Additionally, the Organization asserts that **RULE 14 - OVERTIME** and **ARTICLE VI OVERTIME**, indicate the overtime work should have accrued to the Claimant.

The Carrier contends that the Claimant did not have the demand right to the overtime work, and he did not suffer any lost wages, and that he is not entitled to any additional pay. It also contends that no "short vacancies" under the meaning of the Agreement existed. The Carrier asserts that M. Perry was not asked to perform work which would have accrued to a Ticket Clerk position, and that the Claimant is not regularly assigned to this particular job category at this location. Additionally, the Carrier contends that Tudor is senior to the Claimant and was rightfully assigned the overtime work on January 1, 1998. Further, it is the Carrier's position that decisions regarding the assignment of work, the determination of the necessity for overtime and the desirability of either blanking or filling positions are, and always have been, a prerogative of management on Amtrak's property.

Upon a review of the record in this case, we find that the Organization has failed to refute the Carrier's position. It has not shown that "short vacancies" existed, nor that the Claimant was, in fact entitled to be called in lieu of the employees actually used by the Carrier for the work in question.

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 20th day of December, 2000.