

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 35459  
Docket No. CL-36074  
01-3-00-3-303

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis 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-12613) that:

- (a) The Carrier violated the Clerks’ Rules Agreement effective July 21, 1972, as revised, particularly Rules 7, 14, and other rules, when on July 7 and 14, 1998, it allowed and permitted Ken Jensen to perform clerical duties of position Ticket Clerk, Vice Ronald Wood, during the hours of 11:00 p.m. to 7:30 a.m., location Albany/Rensselaer, NY instead of calling Claimant to perform said duties of that position.
- (b) Claimant Kweiler should now be allowed eight (8) hours overtime pay based on the appropriate rate of pay on account of this violation.
- (c) Claimant Kweiler is qualified, was available for a greater preponderance of the shifts than Mr. Jensen and should have been called to cover the involved position in accordance with Rules 7 and 14.
- (d) 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 Tuesday, July 7 and 14, 1998, a Ticket Clerk vacancy existed on the 11:00 P.M. to 7:30 A.M. shift at the Albany/Rensselaer, New York, Station. Ticket Clerk Ken Jensen, whose regular assignment is from 6:00 A.M. to 3:30 P.M. and who was on duty on the claim dates, was utilized to work the vacancies at the overtime rate.

On August 13, 1998, the instant claim was filed alleging that Clerk R. Kweiler regularly assigned hours of 7:00 A.M. to 3:30 P.M. as a TPMS Commissary Clerk at Albany/Rensselaer should have been called to cover the overtime assignment. The claim was denied at all levels by the Carrier and progressed to the Board for final resolution.

The Board has reviewed the record and all of the pertinent facts before it. As a result of that review, the Board has concluded that Ticket Clerk Jensen and the Claimant both had conflict of hours to the vacancy, but because Jensen was in the same category of service and senior to the Claimant he was the logical choice to call.

#### **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 22nd day of May, 2001.