

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35753  
Docket No. CL-36370  
01-3-00-3-573**

**The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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-12638) that:**

**The following claim is hereby presented to the Carrier on behalf of Claimant D. Erick:**

- (a) The Carrier violated the Amtrak Clerks' Rules Agreement, particularly Rule 14 and other rules, when it failed to call and work Claimant Dan Erick for the position of Material Control Clerk, at the Beech Grove, Amtrak Facility, on January 7, 1999, and instead permitted and allowed junior clerk D. W. Kirstein to perform those duties.**
- (b) Claimant Dan Erick now be allowed eight hours' pay at the punitive rate of \$15.88 per hour for January 7, 1999, on account of this violation.**
- (c) Claimant is qualified, was available, and should have been called and worked in accordance with Rule 14 and other rules."**

**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 February 6, 1999, the Organization filed a claim on behalf of the Claimant charging that the Carrier violated Rule 14 of the Clerks' Rules Agreement when it failed to assign Claimant Dan Erick to the position of Material Control Clerk at the Beech Grove facility on January 7, 1999, and instead permitted and allowed junior Material Control Clerk D. W. Kirstein to perform those duties at the overtime rate. The Organization argues that the Claimant is entitled to eight hours' pay at the punitive rate of \$15.88 per hour for January 7, 1999. The Organization contends that the junior employee was called in to work a lead position at overtime, yet performed no lead functions. The Organization claims that Mr. Charlie Noble, who also worked overtime on the claim date along with Mr. Kirstein, can corroborate the fact that Mr. Kirstein worked overtime, but not in the lead category. The Organization maintains that Mr. Noble's statements clearly refute the Carrier's contentions. The Organization contends that the Carrier incorrectly used a Lead Clerk, who is junior to the Claimant, on overtime to perform work normally done by the Material Control Clerk's position, the Claimant's position. The Organization argues that the Claimant was the senior, qualified, and available employee. The Organization also points out that the history of paid labor the Carrier presented in regards to Mr. Kirstein only indicates that Mr. Kirstein was paid at the higher rate of his regular position and does not in any way indicate the actual position/duties he performed on the date in question. The Organization maintains that the Carrier presented this information simply to ensure that Mr. Kirstein is paid the higher rate. The Organization asserts that there was a Supervisor on duty and that no lead was required and, therefore, the Claimant could have been called to fill a Material Clerk assignment and receive overtime.

The Carrier argues that Mr. Kirstein worked overtime as a Lead Material Control Clerk, which is an appointed position, and that the Claimant had no demand right to the overtime. The Carrier argues that the Claimant has not been a lead, that lead duties were performed, and that no direct Supervisor was on duty. The Carrier

argues that leads do frequently work next to those they lead. The Carrier argues that lead duties were necessary on the claim date in connection with Mr. Kirstein's regular assignment. The Carrier contends that Mr. Kirstein was utilized for four hours overtime as lead directing the activities of Control Clerk Noble because he was the senior Lead Material Control Clerk. The Carrier maintains that the Claimant was not utilized because he was not qualified and had not worked as a lead. The Carrier also asserts that Mr. Noble's statements were suspect since they were made more than 11 months after the claim date. The Carrier also argued that the history of paid labor for Mr. Kirstein on the claim date verifies that he performed appropriate duties and was compensated in accordance with those duties. The Carrier also points out that decisions regarding the assignment of work, the necessity for overtime, and the desirability of either blanking or filling positions are and always have been a prerogative of management. The Carrier claims that the Organization has failed to prove a violation occurred and harm resulted. The Carrier also argues that when lead overtime work became necessary, Mr. Kirstein clearly was the proper employee for the overtime work. The Carrier maintains that the Claimant simply was not qualified, did not have a demand right to the overtime work, did not suffer any lost wages, and he is not entitled to any additional pay.

The parties being unable to resolve the issues at hand, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it scheduled Lead Material Control Clerk D. W. Kirstein to work four hours of overtime on January 7, 1999, rather than the Claimant. The record reveals that the Claimant was not utilized for the overtime because he was not qualified for the position of lead. Mr. Kirstein was regularly assigned to the Lead Material Control Clerk position.

The Organization bases its claim on the fact that Mr. Kirstein did not perform any lead duties on the date in question. However, that assertion has not really been proven by the evidence in the record. The major piece of evidence submitted by the Organization is a memorandum dated 11 months later where another employee states that Mr. Kirstein worked as the Material Control Clerk and not as a lead and that there was a Foreman working that day. However, that belated letter is simply not sufficient to meet the Organization's burden of proof.

The record reveals that the Claimant was the senior employee, but he was assigned as a Material Control Clerk. The junior employee, Mr. Kirstein, was the Lead Material Control Clerk at that same location. The Carrier decided, within its managerial prerogative, that lead overtime work had become necessary and, therefore, the Carrier had the responsibility of calling in a Lead Material Control Clerk to perform the work.

Consequently, the Board must find that the Organization has failed to meet its burden of proof that the Carrier violated the Rules on the date in question when it called in the junior employee to perform the lead work. Therefore, the claim must be denied.

**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 24th day of October, 2001.**