

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35852
Docket No. CL-36463
01-3-00-3-711**

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12677) that:

The Carrier violated the BRAC/NRPC Agreement of July 27, 1976, in particular, Rules 4-A-1, 5-C-1 and Appendix E, Extra List Agreement, when it allowed, permitted and/or required a junior employee to work an overtime assignment and failed to call and use the Claimant who was senior, qualified and available to work.

On May 9, 1999, the Carrier allowed, permitted and/or required Phil Carr, Roster number 466, Position number BCCD-X17 to work an overtime position as a Disp 8B, the Crew Management Department, 15 South Poplar Street, Wilmington, DE from 3 pm to 11 pm.

The Carrier failed to call and use L. Tomasco, Roster number 422, Position number 8CCD-2 who was senior, qualified and available to work.

The claim is filed on behalf of L. Tomasco for 8 hours pay at the overtime rate of 17.59/hr., as a penalty when Carrier violated the above mentioned agreement.

Claim is filed in accordance with Rule 7-B-1, is in order 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.

Claimant L. Tomasco is employed by the Carrier as a regular Crew Dispatcher in the AMTRAK/CNOC Center, Wilmington, Delaware. The record states that on May 9, 1999, the Crew Clerk was filling vacancies for the 3:00 P.M. shift. No qualified extra employees were available, so she called employees in seniority order in an attempt to fill a Dispatcher's position in the Crew Management Department at Poplar Street, Wilmington, Delaware. The called sheet indicates that the Claimant refused the call. A less senior employee was eventually used to fill the vacancy.

On May 19, 1999, the Organization filed a claim alleging that the Carrier failed to call and assign the Claimant properly to a vacant Dispatcher's position on May 9, 1999.

A review of the record points out that while the Claimant did turn down one call to fill a vacant Dispatcher's position on May 9, 1999, the Organization is arguing that a second vacancy occurred on the same day on the 3:00 P.M. to 11:00 P.M. shift. The Claimant, however, was not called for that position. That is the missed call for which the Organization is claiming.

The Board reviewed this record and must conclude that there is insufficient probative evidence contained in it to support the Organization's position that the Claimant was denied an opportunity to fill a second vacancy after he had originally refused a call. The Organization has not been persuasive in this regard.

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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 18th day of December, 2001.