

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35915
Docket No. CL-36316
02-3-00-3-554**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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-12635) that:

1. The Carrier, acting arbitrarily, violated that part of Rule 14 applicable to Auto Train Representatives and other related rules of the Agreement when, on August 30, 1997, it failed or refused to assign Claimant, Auto Train Representative Mr. Josephus Lee, to a special assignment to perform work on board the Auto Train but instead assigned junior Auto Train Representative Ms. Linda Scotti to perform the work.
2. The Carrier shall now be immediately required to compensate the Claimant at the punitive (time and one-half) rate an amount equal to that which it paid to Ms. Scotti for her work on board the Auto Train on the dates August 30 through September 1, 1997.”

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 September 25, 1997, the Organization tiled a claim on behalf of the Claimant, Josephus Lee, contending that the Carrier violated Rule 14 when it failed to assign overtime work in seniority order on August 30, 1997. The Organization argues that on August 30, 1997, because of a shortage of On-Board Service Employees, the Carrier assigned Auto Train Representatives Gloria Gaskins and Linda Scotti to work on board the auto train in the capacity of On-Board Service Employees. The Organization claims that the Carrier refused to assign the Claimant to this special assignment to perform work on board the auto train and wrongfully assigned junior Auto Train Representative Linda Scotti to perform the work to which the Claimant was entitled. The Organization claims that no emergency situation existed on the date in question that excused the Carrier from contacting the Claimant to offer him the extra special assignment work. The Organization asserts that the Carrier knew of its under-staffing problem and that there was more than enough time to have contacted the Claimant. The Organization argues that the Claimant was no less qualified than Scotti and Gaskins to perform the special assignment work in question. The Organization points out that Scotti, Gaskins, and the Claimant are all Auto Train Representatives and are equally familiar with the operation of the auto train; however, the Claimant is the senior employee and was also available on the date in question. The Organization claims that the Carrier was not free to pick and choose to whom it would offer the work in question and that seniority prevails. The Organization argues that once the Carrier made the determination to assign the work to employees covered by the Agreement, the Carrier was obligated to choose from the class according to seniority. In addition, the Organization claims that because Gaskin and Scotti were paid at the overtime rate for the work in question, it was clearly an overtime assignment.

The Organization argues that the Carrier should be required to compensate the Claimant at the punitive (time and one-half) rate an amount equal to that which it paid Scotti for her work on board the auto train on the dates of August 30 through September 1, 1997. The Organization contends that the Claimant has proper claim to the overtime work in question. The Carrier denied the Organization's claim.

The Carrier argues that because of a shortage of On-Board Service Employees on August 30, 1997, an emergency arose and the Carrier had to fill positions as quickly as possible. The Carrier maintains that it was under no obligation to contact the Claimant as a result of the emergency and Gaskins and Scotti were on duty and

available on the date in question, whereas the Claimant was not. The Carrier asserts that it had no choice but to reassign the available personnel to handle the emergency situation created due to the staffing shortage. The Carrier maintains that the employees who worked the special assignment were compensated at an overtime rate for being on special assignment beyond their normal tour of duty. The Carrier also argues that the work for which the claim was filed is not covered by the Agreement and that the Claimant did not have a right under Rule 14 to be called because the work does not accrue to the Agreement. Further, the Carrier contends that there is no Rule in the Agreement to support the overtime payment requested because this was not an overtime assignment, but rather a special assignment due to the staffing shortage on the dates claimed. The Carrier contends that TCU-represented employees do not have a demand right to perform the work at issue. In addition, the Carrier argues that the Claimant is not the proper Claimant because he is not an On-Board Service Employee.

The Board reviewed the record in this case and finds that the Organization failed to meet its burden of proof that the Carrier violated the Agreement when it failed to assign the Claimant to the special assignment to perform work on board the auto train and instead assigned a junior Auto Train Representative to perform the work. Therefore, the claim must be denied.

The Board agrees with the Organization's position that, in many situations, where a Carrier is not obligated to use employees of a certain class but chooses to do so, it is obligated to choose from that class according to seniority. The Board has issued several Awards including recent Third Division Award 35420, which subscribes to that position. (See also Third Division Award 13833.)

However, in this case, there was simply insufficient time for the Carrier to attempt to find the Claimant. The record reveals that on August 30, 1997, the Carrier had seven On-Board Service Employees assigned to work that did not show up. The normal boarding of passengers on the auto train starts at 2:30 P.M. At 3:30 P.M., the Carrier was still short seven On-Board Service Employees. The Carrier made a decision that rather than send out the auto train with seven less employees on board, it would ask two employees already on duty at the Lorton, Virginia, station to work a special assignment. That assignment was to travel on board the auto train from Lorton, Virginia, to Florence, South Carolina, and then return. Although the train still was five employees short of a full crew, the immediate reassignment of those two employees served the Carrier's emergency needs.

The Organization contends that the Carrier should have followed seniority and had the Claimant, an Auto Train Representative who was senior to one of the two who took the position, perform the work that day. As the Board stated above, in most situations, the Organization's position would have been correct; and although the Claimant did not have a specific Agreement right to the work, he should have been selected as a result of his seniority. However, the Board finds that, in this case, the Carrier has shown that there was a sufficient emergency for the Carrier to select the two less senior employees to perform the work. Moreover, it should be noted that the Organization has not shown with sufficient proof that the Claimant was immediately available to perform the work that day so that the train could have gone out on time.

For all of the above reasons, this 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 22nd day of January, 2002.