

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35943  
Docket No. CL-36412  
02-3-00-3-635**

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-12654) that:

- (a) 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 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.
- (b) On August 13, 1997, the Carrier allowed, permitted and required Lamont Turner, Roster No. #952, Position No. 952 to work and overtime position as a Crew Dispatcher in the Crew Management Department, 30th Street Station, Philadelphia, PA from 3 pm to 11 pm.
- (c) The Carrier failed to call and use I. Rosario, Roster No. 880, Position No. 3CD-65, who was senior, qualified and available to work.
- (d) Claim is filed in behalf of I. Rosario for 8 hours pay at the overtime rate for August 13, 1997 as a penalty when the Carrier violated the above-mentioned agreement.
- (e) 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.**

**At the time of the incident that gave rise to this dispute Claimant I. Rosario was assigned to a regular Crew Dispatcher position at Philadelphia, Pennsylvania. On August 13, 1997, the Carrier had need to fill a vacant position for which the Claimant was eligible to be called.**

**The Crew Caller responsible for filling the vacancy called people in seniority order to fill the job. The record indicates that the Claimant was called, but no answer was received. The Caller then proceeded down the list until she found an employee to cover the available assignment. That employee was junior to the Claimant. The Claimant contends that she was at home, her phone was in working order, and she did not receive a call. A claim was immediately filed. It was denied by the Carrier and resulted in this case before the Board.**

**The Organization contends that the Carrier did not verify the no answer notation in the call record with a Management person, the telephone company, or with an Agreement employee. It argues that the Carrier is obligated to do this in accordance with Article 3 (C) quoted below:**

**“(C) Management will verify all failures to answer a work assignment telephone call with a ‘Verified Don't Answer’ from the telephone company, or, if possible, have another employee, preferably an agreement employee, verify that the call was made.”**

**The Carrier did not explain away its failure to follow the terms of Article 3 (C) in this instance.**

**Based on the complete record of this case, the Board is compelled to sustain the instant claim for eight hours at the straight time rate.**

**AWARD**

**Claim sustained in accordance with the Findings.**

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**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 20th day of February, 2002.**