

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36027
Docket No. CL-36747
02-3-01-3-322

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 Organization (GL-12743) that:

The Carrier violated the Amtrak-Northeast Corridor Clerks' Rules Agreement particularly the Extra List Agreement, (Appendix E) Articles and other Rules, Appendix E: Article 3-C, Articles 5a/6a/7a/ . . . and other rules when it failed to call and work Claimant, T. Brown, on dates: January 12, 13, 20, 2000, to perform his regular position, U-41, hours 11:25 pm to 7:55 am, Usher at NY Penn Station, NY, NY, to which he normally works. Instead Carrier held employees to work the two (2) hours rather than calling Claimant Brown in for the entire shift. Carrier used the following employees: on January 12 - M. Robinson, January 20, Mr. Esposito and on January 13 - Mr. Esposito to cover the job.

Claimant T. Brown, now be allowed eight (8) hours pay at the punitive rate of pay, daily rate, \$135.92, for as an Usher, for January 12, 13, 20, 2000, on account of this violation.

The Carrier's own Call out/Manpower Sheets do not indicate as to who called Claimant, what date, time, as there is no indications next to Claimant's name as to that a Representative from the Carrier verified with the Local Phone Company, Bell Atlantic, that Claimant did not take the call, a “Verified Don't Answer” is not next to his name.

Claimant was available, and being the incumbent of his job, U-41, is entitled to perform the work of his position on the rest day at the punitive rate of pay in accordance with the provisions of the Extra List, Appendix E and other rules as cited previously.

The Claim has been presented in accordance with Rules 25, Grievances, from the OFF CORRIDOR Clerks' Rules Agreement, dated June 1998, as amended and revised, and should be allowed and accepted.”

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 T. Brown is an Usher employed at Penn Station, New York City, from 11:25 P.M. to 7:55 A.M. On three days in January 2000, on the Claimant's rest days, incumbents on the evening shift were held over on overtime for two hours after the end of their shifts at 11:25 P.M. This meant that they worked two hours into the Claimant's regular work hours. A claim was filed contending that the Claimant should have been called in to cover the two hours of overtime at the punitive rate basis and paid for eight hours for each of the three days in question. The claim was denied at all levels and progressed to this Board for resolution.

During the processing of the claim on the property a dispute arose over the dates that the claim was discussed with Management and whether the Carrier responded to the claim in a timely manner. That point went unresolved and is before the Board, as is the question of the merits of the case.

The Board reviewed the record in detail and concluded that the Organization does not have a legitimate claim on the merits. No evidence was presented that would require the Carrier to call an employee in to perform two hours of overtime when the incumbent on the job is working and is being held over for the required two hours of work.

As to the issue of timeliness, the Board has concluded that there is sufficient confusion about the actual date that a conference on the case was held, therefore, we are unable to resolve whether or not the Carrier responded to the claim in a timely manner.

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 21st day of May, 2002.