

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36192
Docket No. CL-36789
02-3-01-3-348

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-12745) that:

- I. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Friday October 29, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Norman Blais to Position SA-23 Store Attendant 3pm-11pm.
2. Carrier shall now be required to compensate Norman Blais four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Friday October 29, 1999, which he would have received had he been properly assigned.
- II. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Friday November 5, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Norman Blais to position SA-23 Store Attendant 3pm-11pm.
2. Carrier shall now be required to compensate Norman Blais four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Friday November 5, 1999, which he would have received had he been properly assigned.
- III. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Wednesday November 17, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Norman Blais to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate Norman Blais four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Wednesday November 17, 1999, which he would have received had he been properly assigned.
- IV.
1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Thursday December 9, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Norman Blais to position SA-23 Store Attendant 3pm-11pm.
 2. Carrier shall now be required to compensate Norman Blais four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Thursday December 9, 1999, which he would have received had he been properly assigned.
- V.
1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Friday December 17, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Norman Blais to position SA-23 Store Attendant 3pm-11pm.
 2. Carrier shall now be required to compensate Norman Blais four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Friday December 17, 1999, which he would have received had he been properly assigned.
- VI.
1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Monday October 4, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to Position SA-23 Store Attendant 3pm-11pm.
 2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Monday October 4, 1999, which he would have received had he been properly assigned.
- VII.
1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Wednesday October 6, 1999, particularly

but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Wednesday October 6, 1999, which he would have received had he been properly assigned.

VIII. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Wednesday October 13, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Wednesday October 13, 1999, which he would have received had he been properly assigned.

IX. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Monday October 18, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Monday, October 18, 1999, which he would have received had he been properly assigned.

X. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Thursday, October 21, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Thursday, October

21, 1999, which he would have received had he been properly assigned.

- XI. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Monday October 25, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to position SA-23 Store Attendant 3pm-11pm.
- 2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Monday October 25, 1999, which he would have received had he been properly assigned.
- XII. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Wednesday October 27, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to position SA-23 Store Attendant 3pm-11pm.
- 2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Wednesday October 27, 1999, which he would have received had he been properly assigned.
- XIII. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Tuesday November 9, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to position SA-23 Store Attendant 3pm-11pm.
- 2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Tuesday, November 9, 1999, which he would have received had he been properly assigned.
- XIV. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Monday November 22, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Monday, November 22, 1999, which he would have received had he been properly assigned.
- XV.
 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Monday November 29, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to position SA-23 Store Attendant 3pm-11pm.
 2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Monday November 29, 1999, which he would have received had he been properly assigned.
- XVI.
 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Friday December 3, 1999 particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign James Cadman to position SA-23 Store Attendant 3pm-11pm.
 2. Carrier shall now be required to compensate James Cadman four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Friday December 3, 1999, which he would have received had he been properly assigned.
- XVII.
 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Thursday, October 14, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Harvey Tiomkin to position SA-23 Store Attendant 3pm-11pm.
 2. Carrier shall now be required to compensate Harvey Tiomkin four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Thursday, October 14, 1999, which he would have received had he been properly assigned.
- XVIII.
 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Tuesday October 19, 1999, particularly

but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Harvey Tiomkin to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate Harvey Tiomkin four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Tuesday October 19, 1999, which he would have received had he been properly assigned.

XIX. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Monday December 6, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Pat Vardaro to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate Pat Vardaro four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Monday December 6, 1999, which he would have received had he been properly assigned.

XX. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Thursday December 2, 1999 particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Pat Vardaro to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate Pat Vardaro four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Thursday, December 2, 1999, which he would have received had he been properly assigned.

XXI. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Tuesday November 30, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Pat Vardaro to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate Pat Vardaro four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Tuesday, November

30, 1999, which he would have received had he been properly assigned.

- XXII. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Thursday November 18, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Pat Vardaro to position SA-23 Store Attendant 3pm-11pm.
2. Carrier shall now be required to compensate Pat Vardaro four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Thursday, November 18, 1999, which he would have received had he been properly assigned.
- XXIII. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Tuesday November 16, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Pat Vardaro to position SA-23 Store Attendant 3pm-11pm.
2. Carrier shall now be required to compensate Pat Vardaro four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Tuesday, November 16, 1999, which he would have received had he been properly assigned.
- XXIV. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Thursday November 4, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Pat Vardaro to position SA-23 Store Attendant 3pm-11pm.
2. Carrier shall now be required to compensate Pat Vardaro four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Thursday, November 4, 1999, which he would have received had he been properly assigned.
- XXV. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Tuesday October 5, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Howard Beaunoyer to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate Howard Beaunoyer four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Tuesday October 5, 1999, which he would have received had he been properly assigned.
- XXVI. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Friday October 8, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Howard Beaunoyer to position SA-23 Store Attendant 3pm-11pm.
2. Carrier shall now be required to compensate Howard Beaunoyer four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Friday, October 8, 1999, which he would have received had he been properly assigned.
- XXVII. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Monday October 11, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Howard Beaunoyer to position SA-23 Store Attendant 3pm-11pm.
2. Carrier shall now be required to compensate Howard Beaunoyer four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Monday, October 11, 1999, which he would have received had he been properly assigned.
- XXVIII. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Wednesday October 20, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Howard Beaunoyer to position SA-23 Store Attendant 3pm-11pm.
2. Carrier shall now be required to compensate Howard Beaunoyer four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Wednesday, October 20, 1999, which he would have received had he been properly assigned.
- XXIX. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Wednesday November 3, 1999,

particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Howard Beaunoyer to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate Howard Beaunoyer four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Wednesday, November 3, 1999, which he would have received had he been properly assigned.

XXX. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Friday November 12, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Howard Beaunoyer to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate Howard Beaunoyer four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Friday, November 12, 1999, which he would have received had he been properly assigned.

XXXI. 1. Carrier violated Amtrak/TCU Agreement at CRMF Store, Somerville MA on Monday November 15, 1999, particularly but not limited to Rule 4-A-1 (a) and Rule 4-C-1 when it failed to assign Howard Beaunoyer to position SA-23 Store Attendant 3pm-11pm.

2. Carrier shall now be required to compensate Howard Beaunoyer four (4) hours at time and one-half rate of the Store Attendant's position SA-23 (\$98.64) for Monday, November 15, 1999, which he would have received had he been properly assigned."

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.

Claimants Beaunoyer, Blais, Cadman, Tiomkin, and Vardaro all hold regularly assigned Store Attendant positions at the CRMF Store, Somerville, Massachusetts. For a period of time in the Fall 1999, Store Attendant position SA-23, 3:00 P.M. - 11:00 P.M., in the CRMF Store was vacant and under advertisement. During that time period, the Carrier used regularly assigned day shift Store Attendants (the five listed Claimants) to perform some of the duties assigned to the SA-23 position. These employees were assigned four hours of overtime work on SA-23 after the completion of the hours of their regular assignment.

The Organization contends that the Carrier cannot cover a vacant eight-hour position by assigning an employee to cover the job for less than eight hours. It argues that if the employees only work four hours, as in the case of the Claimants in this dispute, they must be paid for the full eight hours at time and one-half. The Organization cited Rule 4-A-1 and Rule 4-C-1 as support for its position. Those Rules read in pertinent part as follows:

"RULE 4-A-1 - DAY'S WORK AND OVERTIME

- (a) Unless otherwise provided in this Agreement, eight (8) consecutive hours on duty, exclusive of the meal period, shall constitute a day's work for which eight (8) hours' pay will be allowed. Time worked in excess of eight (8) hours in any twenty-four (24) hour period will be considered as overtime and paid for at the rate of time and one-half, except that:

* * *

RULE 4-C-1 - ABSORBING OVERTIME

Employees will not be required to suspend work during regular hours to absorb overtime."

The Carrier argued that the Agreement language cited by the Organization does not restrict the Carrier from covering a vacant position on a part-time basis. It also cites a number of examples wherein it did just that in the Boston area with no claims from the Organization.

The Board concludes that the Agreement language cited by the Organization does not address the issue at hand; nor can it be interpreted to mean that the Carrier must cover vacant regular positions on an eight-hour basis.

The Carrier's argument that its practice of filling such positions on a part-time basis in the Boston area and the many Awards it cited in support of its position buttress the Board's decision.

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 September 2002.