

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36343
Docket No. CL-36567
02-3-01-3-50**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Transportation Communications International Union

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12688) that:

On behalf of Mr. F. Davis, Extra Board Employee, Providence. The Carrier has violated the current agreement between the National Railroad Passenger Corporation and the Transportation Communication International Union, particularly, but not limited to Appendix E, Extra Board Assignment.

On Friday, October 30, 1998, 2:30 p.m. ticket clerk position at Providence Station was vacant. The Carrier called and used Mr. P. T. Beauregard at the punitive rate ahead of Mr. F. Davis who was the senior qualified extra board employee available to cover this position at straight time.

Therefore, claim is made for eight (8) hours at the applicable rate on behalf of Mr. Davis. Mr. Davis, the senior qualified extra board employee available to work this position at straight time, should have been called and used.

This claim is presented in accordance with the current rules agreement, 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.

On November 6, 1998, the Organization filed a claim on behalf of the Claimant, contending that the Carrier violated the parties' Agreement when it failed to call the Claimant for an overtime assignment on October 30, 1998. The Organization initially disagrees with the Carrier's assertion that the claim is vague and lacks specificity. The Organization argues that the facts of the case are clear. The Claimant established his 40 hours of compensated service during the week at issue. In addition, Section H provides that refusal to work overtime does not constitute grounds to reduce the Extra Clerk's guarantee. The Organization maintains that this provision does not state that such refusal cuts the employee off, as the Carrier has done here. The Organization emphasizes that prior Board rulings establish ample precedent for sustaining the instant claim.

The Carrier contends that the instant claim is based on mere allegations and assertions, and the Organization has not proven that any Rule of the Agreement was violated. The Carrier emphasizes that the Organization has failed to identify which part of the Agreement was violated because it cannot do so. Moreover, there is no evidence that the Claimant was available to work the position that is the subject of this claim. The Carrier points out that the Claimant was called once on the claim date, in accordance with the Extra Board Agreement, and he refused an assignment. The Carrier maintains that under an established practice of more than 20 years, this refusal rendered the Claimant unavailable for the entire day on October 30, 1998. The Carrier further contends that there is no doubt that the employee called for the 2:30 P.M. Ticket Clerk vacancy, at the overtime rate, is senior to the Claimant. The Carrier emphasizes that it has the prerogative to pay the overtime rate when filling such a vacancy.

The Carrier then argues that the Organization bears the burden of proof in this matter, but it has offered no evidence that a violation occurred and harm resulted. The Carrier therefore asserts that the instant claim must be denied or dismissed due to the Organization's failure to satisfy its burden of proof. The evidentiary record demonstrates that the Carrier fully complied with all of the Agreement's provisions. The Carrier further asserts that the Organization's request for a penalty payment is unjustified, given that there was no showing of a violation. Moreover, compensatory damages are not due because there has been no showing of a monetary loss. The Carrier maintains that the amount of the claim is clearly excessive, particularly because there is no penalty provision in the Agreement. The Carrier ultimately contends that the claim should be denied or dismissed in its entirety.

The parties being unable to resolve the issues at hand, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement on October 30, 1998. It is fundamental that in claims cases, the Organization bears the burden of proof. In this case, the Organization's claim is unspecific and does not have the requisite facts nor does it cite sections of the Agreement which it believes were violated. It appears that the basis of the claim is that the Claimant was at home and would have worked the afternoon Ticket Clerk vacancy, even though he had refused to work a morning vacancy. However, there are simply insufficient facts to support that claim.

Because the Organization has failed to meet its burden of proof in this case, the 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 26th day of December 2002.