

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36384
Docket No. CL-36950
03-3-01-3-542**

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-12764) that:

On Friday October 8, 1999, an assignment (U-41), with a starting time of 11:25 p.m. became available and was called out at Time and One-Half. On this particular day, Ms. Debbi Hoeler, an employee in Customer Service Department, who is a qualified employee to work the vacancy, was not notified of this vacancy. Instead, the Carrier chose to fill the vacancy with a Junior Employee, Ms. Pat Novias. If the Carrier had called Ms. Hoeler that day, who was on her rest day, she would have accepted the vacancy.

In utilizing the Junior Employee, the Carrier violated the Agreement Between the National Railroad Passenger Corporation (Amtrak) and Its Employees Represented by The Transportation Communications International Union (TCU), Dated July 27, 1976, As Amended and Revised as of September 2, 1994. The Northeast Corridor Agreement.

The Carrier also had chosen to place a mark “LM 545 PM” next to Ms. Hoeler’s name on the Assignment Sheet when the job was being filled. However, in doing so the Carrier does not have “VERIFIED DON’T ANSWER” next to Ms. Hoeler’s name. In leaving this omitted from the Call-Out Sheet, It is clear that Ms. Hoeler was not contacted and that the Carrier tried to cover up a mistake that had taken place.

In light of these errors that Carrier violated Rules:

APPENDIX E, ARTICLE 5A/6a/7a and Article 3-C of the Northeast Corridor Agreement.

Enclosed is: A copy of the Call-Out Sheet

A written statement from Ms. Hoeler who indicates that she in fact had contacted a Carrier Supervisor, Mr. Bruce Scotland, who did in fact

vouch for her even calling her home and verifying that nothing in fact was on Ms. Hoeler's telephone answering machine, and even the Junior Clerk, Ms. Novias, who also had gone thru the same motions as the Carrier's Supervisor and vouched that no message was on Ms. Hoeler's answering machine.

The Claim is for eight (8) hours at straight time for the time the junior employee worked.

Additionally, grievance was violated when Carrier failed to timely respond to grievance appealed to Division Manager Labor Relations."

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 October 8, 1999, an assignment with a starting time of 11:25 P.M. became available. At this time, the Claimant was a qualified employee to work the vacancy. The Clerk in charge of calling employees to fill vacancies went down the list of available employees in seniority order making calls in an attempt to fill the vacancy. The Claimant was on her rest day. If she were called, according to her statement, she would have accepted the call. An employee less senior than the Claimant was assigned the vacancy. A dispute arose over whether the Claimant had been properly called for the vacancy.

The Carrier contends that the Claimant was called by the Call Clerk at 5:45 P.M. and that a message was left on the Claimant's answering machine that there was a vacancy available at 11:30 P.M. A notation to the effect was made by the Claimant's name on the call sheet. On the other hand, the Claimant contends that she was home at the time the alleged call was made to her home and that no call was received by her or her answering machine. The Claimant filed a claim for a day's pay alleging that she did not receive a call.

The Organization is arguing that inspite of the notation on the call sheet that a message was left on the Claimant's answering machine, the Carrier should have made a second call to verify that it was the Claimant's phone number that was called. It relies on Article 3 (C) of the Controlling Agreement to support its position:

"ARTICLE 3

(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."

In reviewing this record, the Board has concluded that the Carrier was not obligated in this instance to make a second call to the Claimant's phone number. When the Claimant's number was called, her answering machine was contacted. Accordingly, the caller left a message about the vacant position. One cannot construe what happened here as a failure to answer the call. If an employee relies on an answering machine to receive his or her calls when the answering machine comes on, it is reasonable to conclude that the call was completed. It is reasonable to conclude that if a message is left on an answering machine, the person at the number called got the message that was left. The Organization has not demonstrated otherwise in this instance.

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 18th day of February 2003.