

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36388
Docket No. CL-36992
03-3-01-3-605**

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-12774) that:

- 1. The Carrier violated the rules of the parties' Agreement made effective September 1, 1976 and revisions thereto, particularly Rules 4-A-1, 4-A-4, 8-H-1 among other applicable rules, as well as Appendix E, Extra List Agreement, when on June 27, 29, 2000 it called and utilized the services of a junior employee on position of Lead Baggage Clerk, Symbol No. LZ1 located at New York City, New York, Penn Station, Mail, Baggage and Express Department, instead of calling and using senior qualified, available employee Paul Boehme on the Lead Baggage Clerk position.**
- 2. The Carrier shall be required to compensate senior, qualified, available employee Paul Boehme for eight (8) hours at time and one-half rate each day June 27 and 29, 2000 account of the prescribed violation.”**

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.

The Board has reviewed the record and the numerous prior Awards submitted by each party. As a result of that review, the Board has concluded that the

Organization has failed to demonstrate just how the Carrier has violated the current Agreement by appointing Mr. Malloy, a regular assigned Baggage man, to the Lead Baggage man vacancy on July 27 and 29, 2000, instead of the Claimant. The Board is aware that the Organization is basically relying on the fact that the Claimant is more senior than Malloy. Consequently, he should have been assigned the position in question, even though he would have been paid on a time and one-half basis. Malloy was paid on a straight time basis.

The Board has decided in the past that vacancies of partially excepted positions can be filled by the Carrier on other than a seniority basis. The Board can find no Agreement Rules that were violated by what took place in this instance. Because one can find an Award in this industry on every side of every issue, more is required to justify sustaining a claim than a Public Law Board Award, as was the basis for the Organization's claim in this instance. The specific contract language that applies and how it was violated by the Carrier is essential to support a sustaining Award. That is not present in this case.

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.