

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36740
Docket No. CL-37236
03-3-02-3-165**

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-12807)
that:**

It is the claim of the District Committee that the Carrier violated the BRAC/NRPC Agreement of July 27, 1976, in particular, Rules 4-A-1 and Appendix E, Extra List Agreement, when it allowed, permitted and/or required a junior employee to work an overtime assignment and failed to call and use the Claimant who was senior qualified and available to work.

On October 8, 2000 the Carrier allowed, permitted and/or required Ron Williams, Roster number 883, Position number 8CCD-R64, to work an overtime position as a Crew Dispatcher, in the Crew Management Department, 15 South Poplar Street, Wilminaton, DE from 3:00 PM to 7PM.

The Carrier failed to call and use Jean Hornyak, Roster number 465, Position number 8CCD-4, who was senior, qualified and available to work.

The claim is filed on behalf of TCU for 4 hours of pay at the overtime rate for Jean Hornyak as a penalty the Carrier violated the above-mentioned agreement.

Claim is filed in accordance with Rule 7-B-1, 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.

The Claimant was assigned a regular Crew Dispatch position at Wilmington, DE. On October 8, 2000, an employee junior to the Claimant worked four hours' overtime after his regular tour of duty. The Claimant was skilled in the position of Lead Crew Dispatcher and was available to work the four hours of overtime the junior employee worked. A claim was filed that was denied by the Carrier and has been placed before the Board for final resolution. The Carrier took the position that it paid the junior employee overtime for the four hours by mistake. That employee stayed on at work to complete some work he did not finish on his regular shift. He voluntarily stayed on to work; he did not expect to be paid.

Based on a review of this record, the Board has concluded that the Carrier was in violation of the Agreement allowing work to be done by an employee on a voluntary basis that should have been performed for pay by an eligible employee. The Board, therefore, concludes that the instant claim should be sustained for four hours at the **pro rata** rate.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of October 2003.