

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36780
Docket No. CL-37265
03-3-02-3-283

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-12817) that:

1. The Carrier violated the rules of the parties' Agreement dated July 27, 1976, effective September 1, 1976, particularly Rule 1 Scope, Rule 5-C-1 (Appendix E), among other applicable rules on December 4, 2000, when it failed to fill position of 7:30 a.m. Accounting Clerk vacated by the incumbent, who on said date was required to fill position of Lead Baggage man (Supervisor position).
2. The Carrier shall be required to compensate senior, available, qualified employee C. Rivera for eight (8) hours at time and one-half rate for December 4, 2000 account of failure to call and use him on the 7:30 a.m. Accounting Clerk assignment.
3. This claim has been presented and progressed in accordance with provisions of Rule 7-B-1 of the Agreement 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 December 4, 2000 the Carrier used a Statistical Clerk in Penn Station, who occupied a 7:30 A.M. assignment, to work in a Lead Baggage-man Vacancy-10 management position. The Carrier blanked the Statistical Clerk's position on December 4. The Organization filed the instant claim contending that Clerk C. Rivera, the Claimant, was the most senior qualified employee available to fill the 7:30 A.M. Account Clerk assignment left vacant on December 4. The Carrier denied the claim as having no Agreement support.

The Board reviewed the record and is compelled to endorse the Carrier's position. No Agreement language or past practice prevents the Carrier from blanking a position left vacant by a temporary promotion of the incumbent. The Organization has not supported its claim 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 29th day of December 2003.