

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36786  
Docket No. CL-37349  
03-3-02-3-349

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-12891)  
that:

Claim of the System Committee of the TCU (NEC-2023) that:

1. The Carrier violated the rules of the parties' Agreement, dated July 27, 1976 made effective September 1, 1976, particularly Rules 1-B-1, 2-A-1, 2-A-5, among other applicable rules when effective October 17, 2000 it arbitrarily, without contract support, determined position of Lead Accounting Clerk to be a partially exempt position (PEP) and without advertising the position to all employees via bulletin process, awarded the Lead Accounting Clerk position to junior employee K. Perrenod.
2. The Carrier shall now be required to reinstate the Lead Accounting Clerk position as an assignment coming under the scope and coverage of the rules of the controlling agreement and promptly post said position to all employees via bulletin advertisement.
3. The Carrier shall compensate employee D. Hoeler who was the senior, qualified employee in line for the Lead Accounting Clerk position on October 17, 2000, retroactively commencing October 17, 2000 for each day thereafter she was denied the

Lead Accounting Clerk position, continuing each day until such time this violation is corrected and proper adjustment is made.

4. This claim is to be considered a 'continuing claim' presented and progressed in accordance with the appropriate provisions of Rule 25 of the OFF Corridor 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.

At the time the instant dispute arose, Claimant D. Hoeler was working as a Customer Service Clerk. On October 17, 2000, the Carrier appointed K. Perrenod to a position of Lead Accounting Clerk. The Claimant was senior to Perrenod and was identified in the instant claim by the Organization as the Claimant. On November 15, 2000, the Organization filed the instant claim alleging that the position filled by Perrenod was not a partially excepted position, as the Carrier asserts. It argues that the Carrier cannot produce the signed Agreement between the General Chairman and the Senior Labor Relations Director that establishes the job as a PEP position. The Organization concludes, therefore, that the position is a bid and bump position that should have been posted for all employees to consider.

The Carrier denied the claim at all levels, contending that the position at issue has been a partially excepted position for more than 25 years. Even though minor

changes have been made in time and schedules for the job, it still remains a PE position and the Carrier can appoint whomever it chooses to a PE position.

The Board reviewed the record and studied the documents presented in the record to support the Carrier's case. The Board is persuaded from a review of those records that the Lead Accounting Clerk position at issue here has been a partially excepted position for a long period of time. The Organization has not been persuasive in its claim.

**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.