

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36787
Docket No. CL-37350
03-3-02-3-356

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-12895)
that:

The Carrier violated the Amtrak-Northeast Corridor Rules Agreement particularly but not limited to Rules/s 1-B-1, 2-A-5, 3-C-1, Article III-Section 3 (of the 2nd day of the 1994 agreement), and other rules when on 24 October, 2000, it refused to allow Claimant Regina Lawrence, to displace position of Lead Usher, hours 11pm to 7:30am, symbol NYP-PAD-008-00, at NY Penn Station Customer Services Department, rate of pay \$17.26 + \$.50 per hour, held by junior employee Pat Novias.

Claimant R. Lawrence shall now be allowed this displacement, be allowed eight (8) hours pay at the pro-rata rate of \$143.68 + \$.50 an hour for each and every work day thereafter on account of this violation on October 24, 2000, the Carrier produce any documentation supporting that this claim is invalid with the proper payroll documentation, and show support that this position is not a position eliminated with the (Partial Exempt) status removed as an agreement made signatory with the Carrier's Senior Relations Director and the Organization's General Chairman, A. Santoro, Jr.

In order to terminate this claim, Claimant R. Lawrence shall now be permitted to displace said position, be paid retroactively for days not

allowed to assume position, and produce any and all documentation as said to in above requests.

This claim has been presented in accordance with Rule 25, of the OFF CORRIDOR CLERKS RULES AGREEMENT, dated June 1998 and should be allowed and accepted under this provision."

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 or about July 1, 2000, B. Martin, the incumbent of the Lead Usher position at issue here, was promoted to a Supervisor's position. Employee Novias (junior to the Claimant) worked the position on a temporary basis until she was appointed to it on a full-time basis on September 19, 2000.

On November 22, 2000, the Organization filed a claim on behalf of R. Lawrence, the Claimant, because he was denied a bid attempt to displace Novias from the Lead Usher position. Essentially, the claim alludes to the fact that the partially excepted status of the position ran out because it had been vacant for more than 90 days prior to Novias being appointed to it. It was now a bid and bump position that should have been posted for all to bid on if they chose.

The Board has reviewed a number of cases involving partially excepted positions with the same parties. The general trend seems to be that the Organization challenges a substantial number of PEP appointments. It appears

from the record in the instant case that the Organization's claim falls short of what is required to prevail. It is unrefuted that the incumbent was appointed to the Lead Usher position within 90 days of it becoming vacant on or about July 1, 2000. Given that fact, there is no valid claim before the Board.

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.