

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36890  
Docket No. CL-37475  
04-3-02-3-491**

**The Third Division consisted of the regular members and in addition Referee M. David Vaughn 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-12913)  
that:**

- 1. 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.**
- 2. On February 2, 2001, Carrier allowed, permitted and/or required Dawn Turner, roster No. 663 position CCD-213 to work an overtime position as a Dispatcher in the Crew Management Department, 15 South Poplar Street, Wilmington, DE from 11:00 p.m. to 7:00 a.m.**
- 3. Carrier failed to call and use Phillip Carr, roster No. 437, position CCD 269, who was senior, qualified and available to work.**
- 4. Claim is filed on behalf of Phillip Carr for 8 hours of pay at the overtime rate for 2C, as a penalty the Carrier violated the above-mentioned Agreement.**

5. 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 had been awarded a Crew Dispatcher position, but the Carrier was holding him on an Assignment Clerk position. Thus, the Claimant was working as a Crew Assignment Clerk at Wilmington, Delaware, when the dispute arose. He is covered under the provisions of the parties' Northeast Corridor Clerical Agreement.

On February 2, 2001, a “must fill” Crew Dispatcher vacancy occurred on the “C” tour (11:00 P.M. to 7:00 A.M.). The Organization protested that the Carrier failed to call the Claimant to fill the Crew Dispatcher vacancy from 11:00 P.M. to 7:00 A.M. in the Crew Dispatching Department on February 2, 2001 (the claim was later expanded to include February 3, 5, 11 (3 shifts) and 22, 2001). Instead, it called and used junior employee D. Turner. The Carrier contends that the Claimant was not called because he was not an employee in the Crew Dispatching Department and was on the Supplemental List. The Carrier contends that the Supervisor filled the Crew Dispatcher vacancy by calling Crew Dispatchers in seniority order and ultimately filled the vacancy with Turner without reaching the Supplemental List.

The Organization cited Rule 4-A-1 (Day's Work and Overtime) and Appendix E as being violated. On the property, the Organization augmented the original claim by citing Rule 2-A-1 (Bulletining and Awarding of Position) paragraph (d) as follows:

**"An employee, in service, awarded a bulletined position shall be transferred to such assignment within ten calendar days after the effective date of the award. If the employee is not transferred within the specified time limits, he will be paid the higher rate of the two positions, and any additional actual and necessary expenses plus \$3.00 per day for each work day that he is withheld from such assignment beyond the time limit above described. [Increased by June 30, 1995 General Wage Increase agreement to \$5.00.]"**

The Organization filed seven claims on behalf of the Claimant that were denied by the Carrier. By letter dated September 14, 2001, the General Chairman progressed the dispute to the Director, Labor Relations. The claims were denied by the Carrier on November 13, 2001.

The Organization argues that the Carrier violated Rule 4-A-1 and Appendix E, Extra List Agreement, of the current Agreement when it failed to call and use the Claimant who was senior, qualified and available to work an overtime assignment on February 2, 2001 (later amended to include February 3, 5, 11 (3 shifts) and 22, 2001). It contends that the Claimant, who had been awarded a Crew Dispatcher position but was being held by the Carrier in his Crew Assignment Clerk position, was an employee of the Department and was entitled to work overtime in the Crew Dispatching Department.

The Organization further argues that under Rule 2-A-1, the Carrier was required to transfer the Claimant, a successful bidder, to his new assignment within ten calendar days. It contends that the Carrier's failure to do so entitled the Claimant to the higher rate as between Assignment Clerk and the recorded-awarded position, as well as the \$5.00 per day penalty stipulated in Rule 2-A-1.

Finally, the Organization argues that in accordance with numerous Awards, words found in an Agreement are to be given their customary, commonly accepted

meaning and are not subject to the Carrier's arbitrary interpretation. It contends that by contorting the meaning of words, the Carrier seeks to defend insupportable contentions.

The Carrier argues that the claimed violations of Rule 4-A-1 and Appendix E are absolutely without merit. It asserts that the Organization presented no proof that the Claimant was available to work the overtime. The Carrier further contends that the Claimant was not an employee in the Crew Dispatching Department. It argues that the Claimant was on the Supplemental List only and, as such, was to be called for overtime in the Crew Dispatching Department only after all available Crew Dispatchers decline overtime. It argues that the Supervisor called Crew Dispatchers in seniority order and that Turner, an incumbent Crew Dispatcher, was properly called for the overtime work.

The Carrier further argues that the Organization failed to meet its burden of proof in establishing a violation and that "mere assertions" are not proof. Citing authority, the Carrier contends that because the Organization has not submitted any proof that a violation occurred with respect to the claim, it must be dismissed.

The Carrier's final argument asserts that the amount claimed is clearly excessive. It contends that, because the Organization could not show an intentional delay by the Carrier in moving the Claimant to his new position, the Claimant did not lose any additional compensation beyond his regular hourly rate and the \$5.00 per day penalty stipulated in Rule 2-A-1 which he received.

The Board holds that the claim on behalf of the Claimant must be denied. The Board assumes for purposes of its analysis that the Claimant was available to work had he been called. The evidence establishes that although the Claimant was awarded a Crew Dispatcher position, the Carrier was holding him on an Assignment Clerk position. The practical consequences of the Carrier's holding him on the Clerk position are: (1) in accordance with Rule 2-A-1 of the Agreement, he received \$5.00 per day for each workday that he was withheld from his new assignment; and (2) he was not an employee in the Crew Dispatching Department, but his name was added to the Supplemental List.

The provisions of the Agreement are clear and despite the Organization's suggestions to the contrary, the Board has no authority to go beyond them. The Organization's claim that the Carrier was obligated to transfer the Claimant to his new assignment is without merit. The Agreement clearly contemplates a situation, as in the instant case, where an employee who has been awarded a new position is nonetheless held on his old position. In such cases, the Agreement requires that said employee receive \$5.00 per day for each workday he is withheld. There is no dispute that the Claimant received said payment. Because the Claimant never actually began his new assignment in the Crew Dispatching Department, he was not yet an employee in the Crew Dispatching Department and his name was never added to the Crew Dispatcher overtime list, but was only listed on the Supplemental List. To fill vacant Crew Dispatcher positions for the overtime the Carrier was first obligated to call all available Crew Dispatchers. If all Crew Dispatchers declined the overtime assignment, then and only then was the Carrier obligated to contact those, like the Claimant, who were on the Supplemental List. Because a Crew Dispatcher on the overtime list accepted the overtime assignment, there was no need to contact anyone on the Supplemental List.

The Organization's claim that the Carrier was obligated to transfer the Claimant to his new assignment is without merit.

**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 25th day of February 2004.