

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36925  
Docket No. CL-37555  
04-3-02-3-591**

**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-12930) that:***

- 1. Carrier violated the TCU/NRPC Agreement at 30th Street Station, Philadelphia, PA, when it failed to use Mr. Gary Servedio (roster #443) Chief Clerk, Northeast Corridor, who works at the MB&E loading dock, Philadelphia, from October 8, 2000 through present. The Claimant was senior, qualified and available to work these vacancies.**
- 2. The Claimant shall now be allowed eight hours a day at the punitive rate for the Chief Clerk, Northeast Corridor position commencing October 8, 2000 and continuing through the date that claim is resolved."**

**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 of the incident that gave rise to this case, the Claimant Gary Servedio was regularly assigned as a Chief Clerk in the MB&E Department at 30th Street Station, Philadelphia, Pennsylvania. In late 1999, the Carrier's railroad express business in Philadelphia began to increase rapidly. At that time, the Carrier had two Chief Clerk positions, one daylight and one afternoon. The Carrier utilized Guaranteed Extra Board Clerk Lewis to work rest days of the two positions at the straight-time rate. He also worked overtime as needed to meet the needs of the service. This practice began in February 2000 with no complaint or claims from the Organization or the Claimant.**

**On October 23, 2000, the District Chairman entered into a local Agreement permitting Amtrak to use two Clerks to perform Chief Clerk work until the Department obtained authorization for two additional Chief Clerk positions. At the time this Agreement was signed on October 23, 2000, the District Chairman learned that Ms. Lewis had been used since February 2000 to cover the rest days of the two original Chief Clerk positions. On December 7, 2000, the instant claim was filed on behalf of Chief Clerk Servedio.**

**The Organization contends that Ms. Lewis held Extra Board No. 3 Baggage/Checkman position 7EX033. Her position duties did not include filling Chief Clerk NEC vacancies.**

**The Carrier contends that Ms. Lewis was filling the position with the Agreement of Assistant General Manager Slimbock and Vice General Chairman Finn. The Union denies that such an Agreement existed.**

**The Board reviewed the total record of this case. As a result of that review, it has concluded that the Organization has not made a persuasive case in this instance. A basic shortcoming is that Ms. Lewis held the position at issue for about nine months with no complaint from either the Organization or the Claimant. It was not until District Chairman Ward became involved in formulation of an Agreement to**

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allow the Carrier to appoint two Clerks as Chief Clerks for a 60-day period that Ms. Lewis became an issue. The Organization has not demonstrated how the Carrier violated the Agreement in handling Ms. Lewis or specifically how the Claimant was harmed. The Organization has not carried its burden of proof 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 22nd day of March 2004.**