

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36927
Docket No. CL-37558
04-3-02-3-622

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-12932) that:

1. Carrier violated the Agreement on June 6, 2001 (Wednesday), when it failed to properly fill an Agreement position in accordance with the Clerks Rules Agreement.
2. Carrier shall now be required to compensate the senior, qualified, available employee, (Mr. William Gould) for eight hours (8 hours) pay at the time and one-half rate of a Red Cap (\$15.85 per hour) for Wednesday, June 6, 2001, which he would have received had position (RC850) been filled properly.”

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.

Eric Mazzio held Position RC850 at the South Street Station in Boston, Massachusetts. On June 5 and 6, 2001, Mazzio was off work for personal reasons. He notified the Carrier well in advance that he would be off on those days. On Tuesday, June 5, the Carrier filled his vacancy. On Wednesday, June 6, the Carrier chose to blank the position rather than fill it on an overtime basis. The Carrier reasoned that Wednesday is a slow passenger day and the job need not be filled.

On June 7, the Organization filed a claim on behalf of employee William Gould for eight hours' pay at the time and one-half rate account he was not called to fill the second day, June 6, of the Mazzio vacancy.

The Carrier denied the claim on the basis that it had the right to blank the position for any number of reasons, not the least among them being that Wednesday was a slow passenger day in Boston and it was not economical to fill the job on an overtime basis.

The Organization argued that the Carrier cannot arbitrarily blank a vacant position. It contends that such vacancies must be filled from the Extra Board or, if no Extra Board employees are available, by calling regularly assigned employees on a seniority basis.

The Board addressed this issue in a variety of different situations in the past. The Board has generally concluded that the Carrier does have the right to blank vacant positions, if it chooses. It cannot, however, blank a position and then direct another employee, contract or non-contract, to perform all or part of the job duties of the blanked position without being subject to a claim. In its review of this record, the Board can find no evidence that anyone performed the duties of the blanked position. Nor can the Board find a detailed explanation of what contract clause the Organization charges the Carrier with violating.

AWARD

Claim denied.

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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.