

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36928
Docket No. CL-37568
04-3-02-3-623

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-12933) that:

- (1) The Carrier violated the Agreement on Saturday, May 26, 2001 when it released the following employees from their respective Temporary positions before the expiration of same. This action causes harm to an employee who was available to work the position, had Carrier not violated the Agreement.
- (2) The Carrier shall now compensate Mr. Mike Mirabella for eight hours pay at \$17.27 per hour for Saturday May 26, 2001 (BG833) 6:00 A.M. - 2:00 P.M., which he would have received had he been properly called.
- (3) Although only one employee is harmed for compensation in this dispute, all employees are harmed by Carrier's violation of the Agreement, therefore, this document not only is presented for compensation, it is also presented to show the violation and have put on file for future reference the Organization's statement stating the fact it does not agree with Carrier's action and will not accept this action as a precedent setting procedure.
- (4) Carrier shall now be required to provide the Organization with a documentation showing it will not proceed with this practice in the future.”

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.

Red Cap Eric Mazzio, the incumbent of Position RC850, was off on Medical Leave. His position was advertised as a temporary position with a workweek of Saturday through Wednesday. The rest days were Thursday and Friday. The assignment's starting time was 7:30 A.M.

Position RC850 was awarded to employee Robert Pelusi as a temporary position. Pelusi's position was awarded to David Walsh. Walsh's position was awarded to employee Byrnes. All of these changes were made on a temporary position basis. Employee Byrnes's position was advertised, but no award was made. It remained an open position.

On Saturday, May 26, 2001, Mazzio returned to Position RC850 at 7:30 A.M. He had informed the Carrier authorities earlier in the week that he intended to report back to work from his Medical Leave on May 26. As a result of this information, on May 25, 2001, the Carrier called and instructed the employees involved in the chain reaction when Mazzio went on leave to return to their prior assignments effective Saturday May 26. All employees so notified returned to their former positions as directed.

The Organization filed the instant claim contending that the Carrier had no authority to notify the employees involved in the chain reaction that they must return to their old jobs a day ahead of time. By so doing, the Organization

contends, the Claimant was denied the opportunity to be called for a position that started at 6:00 A.M.

The Board reviewed this record in detail. The Board cannot ascertain, based on this record, just what Rules the Carrier violated in this instance or how the approach taken by the Carrier could be challenged. When Mazzio went on Leave, a series of temporary displacements took place. When he returned to work, job changes took place in reverse order. Everyone went back to his old jobs, with no complaint. This Board can find no fault with the Carrier's action 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.