

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37030
Docket No. CL-37728
04-3-03-3-51

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-12961)
that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement on May 4, 2001, when it failed to call and work Claimant H. Malave for position of Expressman, Job Symbol No. AC/B-3, Hours 6:31 AM to 3:01 PM, at NY Penn Station, NY, NY. Claimant Malave now be allowed eight (8) hours at the punitive rate of pay as an Expressman, on account of this violation.

The Carrier's Manpower sheet for May 4, 2001, that is attached, indicates that the Express position, AC/B-3 at NY Penn Station normally worked by incumbent, Mr. Ku, was blanked. However, the Organization's Shop Steward, Mr. Gunthropes who works in the Mail Baggage and Express Dept. observed and questioned the Carrier's supervision within the Department as to who would be filling the vacancy in the Express Office due to Mr. Ku, the incumbent, had been given an excused absence for the day, and that if a passenger wanted to ship anything would there be anyone in the Department to help them since the position was vacant. He was informed that since the Carrier's Messenger Clerk works in the same location and if someone (a potential client) would want to ship an item or several items, he could then perform his work along with any that may come his way in the Express Office. Mr. Gunthropes observed many times throughout

the course of the day, seeing Mr. Cox, writing many/many express bills for the day for passengers who wanted to ship their various items.

This duly accredited representative observed Mr. Cox performing such work, and when Mr. Cox was asked if he told to perform his and the duties of the Express Office from 6:31 AM, he indicated yes, and that the position was blanked, he was not happy in having to perform the duties of the Express Office, as what would happen to the passengers when he had to leave and deliver the mail in his own duties, would the passenger have to stay and wait for a long period of time and that the Company could lose potential revenue of this. Mr. Malave was available to perform the duties of the Express Office, would have accepted and performed the duties of an Express Clerk. He was never given a first/second call. He would have received the punitive rate of pay. The Carrier did not make up a call sheet for this position when this duly accredited representative inquired about this position from the Department supervisors. The only sheet provided was the attached, the assignment sheet.

The many express forms that Mr. Cox had written out while he diverted from this position were not provided to the Organization, but will verify that such a diversion was committed on Friday, May 4, 2001.

The Carrier violated the following work rules but not limited to:

Rule 4-A-4 (Work on Rest Days)

Rule 4-C-1 (Absorbing Overtime)

The Extra List Agreement (Appendix E) Article 3-c,
Article 5A, Article 6A and other rules.

Claimant Hector Malave was senior, available, qualified employee and should have been called and allowed to work the vacancy. He was not.

This claim has been presented under the provisions of Rule 7-B-1 and from Rule 25 of the Off-Corridor Agreement and should be allowed and accepted as presented."

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 May 4, 2001, the Express Office position held by Mr. Ku, was blanked. Mr. Cox, who also works an Express Office position with comparable tour hours as the blanked position, was directed to fill in on the vacant position. He was in effect covering two positions at once. An Organization Shop Steward who works in the area observed this situation throughout the day.

On June 18, 2001, the instant claim was filed. It was denied by the Carrier at all levels and placed before the Board for resolution. The Board reviewed the claim and finds no basis on which to support the Carrier's position. On many occasions in the past, the Board upheld the Carrier's right to blank a position. It also stated that when a position is blanked, it is understood that the duties of that position will not be performed. In this case, the position was blanked, but the required duties of the position were performed by a Clerk working his regular job. The Clerk who performed the work of the blanked position covered two jobs on the day in question. Such an arrangement is not acceptable.

The Claimant identified in this claim, was ready willing and qualified to perform the work of the blanked position. He should have been called.

The claim will be sustained for eight hours at the straight time rate of pay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 18th day of May 2004.