

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37071
Docket No. CL-37529
04-3-02-3-557

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-12926) that:

1. The Carrier violated the rules of the parties' Agreement made effective September 1, 1976 and revisions thereto, particularly Rules Scope 1(c), 1B-1, 2-B, 3-D-1, 7-A-1, among other applicable rules, when on or about March 30, 2001 it treated employee Daniel Philpot in an unjust manner when he was not considered and/or selected to position Lead Ticket Agent, a partially excepted position (PEP), which position was awarded by appointment to a younger employee with less experience.
2. The Carrier shall be required to reverse the decision made by the Ticket Office Manager and award the Lead Ticket Agent (PEP) position to the senior, qualified employee D. Philpot, and compensate him for all wage loss sustained, the difference of rate of pay between the rate of the Lead Ticket Agent position and the lower rated positions he held during the period of violation.
3. This claim is to be considered a 'continuing claim', protesting the Carrier's abuse of its discretionary powers, and is presented and progressed in accordance with the provisions of Rule 7-B-1 of the Agreement 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.

At the time of the incident that gave rise to this case, the Claimant was assigned to a regular Ticket/Accounting Clerk position at Philadelphia's 30th Street Station. In February and March 2001, the Claimant applied for Partially Excepted Lead Ticket Clerk positions at the Station. The Claimant was not selected for any of these positions. Junior employees received the promotions that he sought. By letter dated April 6, 2001, the Claimant requested an Unjust Treatment Hearing because he was not selected for any promotion for which he applied. The Hearing was granted and held on June 1, 2001. The Hearing Officer issued his decision in the matter on June 11, 2001. He found that the Claimant was not unjustly treated by not being selected for the Lead Ticket Clerk position he sought. The Claimant appealed that decision to the Board.

The Board reviewed the record, including the transcript of the June 1, 2001, Unjust Treatment Hearing. As a result of that review, we have concluded that the Hearing Officer's decision was reasonable and that the Carrier acted within its rights throughout these proceedings.

In the matter involving appointments to Partially Excepted positions, the Carrier has broad authority and is not bound by many of the general Rules in the Clerks' Agreement. The decision made by the Carrier representatives to appoint a junior employee than the Claimant to the Lead Position in the Wilmington, Delaware, Ticket Office, given the facts as contained in this record, cannot be

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considered arbitrary or capricious. The Claimant's rights were not violated 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 21st day of July 2004.