

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37079
Docket No. CL-37853
04-3-03-3-192

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-12985)
that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement on August 31, 2001, when it failed to make all known vacancies available to the Senior Extra List Employee, then called and used the said junior employee in a manner and into a territory that has not been established by written agreement between the Division Chairman of the Organization and designated officer of the Corporation.

Claimant N. Cohen now be allowed eight hours at the pro-rata rate at the daily baggage man rate, and an additional eight hours at the pro-rata rate at the baggage man daily rate on account of the hardship caused on Claimant as he did not receive a forth hours work week check and was not able to pay a utility bill at home.

This claim is presented in accordance with Rule 7-B-1 of the NEC Agreement in conjunction with Rule 25 of the Off-Corridor Rules Agreement and should be allowed as presented.

Additionally, the Agreement was violated when Carrier failed to respond to the grievance as required by Rule 25.”

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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.

The Board reviewed the record as presented. As a result of that review, the Board concluded that the Claimant was not denied any rights because of the Carrier's handling of this case. The Board has also been confronted with a time-limit argument alleging that the Carrier failed to respond to the instant claim at the second level of handling. The Board has been confronted on numerous occasions in this list of cases with the identical claim involving the identical people. The Board concluded in those cases that the Organization did not carry its burden of proof on the timeliness issue. We see no reason to conclude otherwise in this case.

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.