

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37127
Docket No. CL-37980
04-3-03-3-394**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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-12999) that:

- 1. The Carrier violated the rules of the parties' Agreement dated July 27, 1976, effective September 1, 1976, particularly Rule 1 Scope, Rule 4, Rule 5-C-1 (Appendix E), among other applicable rules and agreement, when on December 3, 4, 5, 6, 12, 17, 19, 2001, and January 14, 2002 it failed to fill position of Lead Baggage man, Job Symbol LZ-1, hours of assignment 7:30 a.m. to 4:00 p.m. located at Penn Station Mail and Baggage Department, New York City, New York vacated by incumbent Roop Jagnarian, who on said dates was required to fill non-agreement position of Baggage Supervisor.**
- 2. The Carrier shall be required to compensate senior, qualified, available employee Paul Boehme for eight (8) hours at time and one-half rate for December 3, 4, 5, 6, 12, 17, 19, 2001 and January 14, 2002 account of failure to call and use him each day on the vacant 7:30 a.m. Lead Baggage man position, in addition to \$4.00 each of the aforementioned dates account of this violation.**
- 3. This claim has been 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.

On December 28, 2001 and January 18 and 20, 2002, the District Chairman filed claims that the Carrier violated the Agreement when it temporarily moved the Lead Baggage Man to a management position and blanked the Lead Baggage Man position. The claims are clearly controlled by the Board's decision in Third Division Award 36780 which held, "No agreement language or past practice prevents the Carrier from blanking a position left vacant by a temporary promotion of the incumbent."

Nevertheless, the Organization argues that the claims must be sustained on procedural grounds. On January 28, 2002, the Manager Mail Baggage & Express denied the claims. By letter dated February 7, 2002, the District Chairman appealed to the Division Manager Labor Relations and requested a conference. By letter dated February 28, 2002, addressed to the Vice General Chairman, the Division Manager Labor Relations set a date for the conference. The conference was held on May 16, 2002. Both the District Chairman and the Vice General Chairman attended. By letter dated July 1, 2002, addressed to the Vice General Chairman, the Division Manager Labor Relations advised that the appeal was denied. By letter dated July 15, 2002, the Vice General Chairman protested the Division Manager Labor Relations' sending of the appeal denials to him instead of the Division Chairman and returned the denials to the Division Manager. Also by letter dated July 15, 2002, the District Chairman, now serving as Division Chairman, appealed the claims to the Director of Labor Relations and advised that he considered the cases outlawed because he had received no decisions from the May 16, 2002, conference.

During handling on the property, the Organization asserted the Rule 7-B-1 required the Carrier to respond to the duly accredited representative who listed the

claim, and therefore the Carrier's response to the Vice General Chairman was ineffective, requiring that the claim be sustained as presented. The Carrier disputed this contention and asserted that because both the Division Chairman and the Vice General Chairman were present at the conference, the Division Manager Labor Relations could properly respond to either of them.

Neither party quoted the text of Rule 7-B-1 during handling on the property. The Organization quoted a version of the Rule in its Submission that calls for the Carrier to respond to whoever listed the claim or grievance, but at the Hearing, the Carrier submitted a different version of the Rule which does not specify that the response be sent to a particular individual. Regardless of which version of the Rule is accurate, we find no procedural defect that warrants sustaining the claim. Assuming that the Division Manager Labor Relations should have directed the appeal denials to the Division Chairman, principles of good faith and fair dealing would require the Vice General Chairman to either forward the denials to the Division Chairman or promptly notify the Division Manager Labor Relations that the denials had been misdirected and should be directed to the appropriate representative. Instead, the Vice General Chairman waited until the time limits had expired and then returned the denials to the Division Manager Labor Relations. Such game playing should not be rewarded by sustaining an otherwise meritless claim.

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 25th day of August 2004.