

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37685
Docket No. CL-38287
06-3-04-3-216

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-13038)
that:

The Carrier violated the Amtrak-Northeast Corridor Rules Agreement on Saturday June 1, 2002, when it called and worked partial excepted Lead Ticket Clerk, M. James out of the separate (category) for which she and all of the lead clerks (who are all) Partial Exempt in the NY Penn Station Ticket, and allowed her to work in the Category of Bid and Bump of which regularly assigned Ticket Sellers fall under. Regular assigned Ticket Seller positions in the NY Penn Station Ticket Office are all in the territory and are under the jurisdiction of the extra board when covering vacancies, lead partial exempt ticket positions are not.

In allowing M. James to work and get paid at the punitive rate of pay of eight hours for the extra work performed the Carrier failed to contact claimant Jeff Davis, who is senior to junior James, is qualified, was available, and is regularly assigned as a Ticket Seller and whose position is in the territory and the jurisdiction of the extra board involved in covering vacancies in the ticket office.

Claimant Jeff Davis now be allowed eight hours at the punitive rate of pay based upon the pro-rata rate as a Ticket Seller on account of this violation.

The Carrier is in violation of Appendix E – Articles 1a, b3/c/5a/6, Rule 5-C-1 Rule 4-A-4, and other Rules.

The Carrier created extra Ticket Seller work in the ticket office at NY Penn Station for June 1, 2002, at 5:00 a.m. until 1:30 p.m. The Carrier did not document at what time on and what date on their Assignment Sheet and Overtime Call-Out Sheet that they had contacted employee, M. James to work Overtime at 5:00 a.m. on June 1, 2002. The Carrier's Call-Out Sheet for overtime indicates that the last person to be contacted in the bid/bump category for any overtime on 6/01 was *Dominic Mazzurco who said no.*

Claimant Davis was not asked for any overtime that day as there is no time, date, initials of anyone who might have contacted him for the extra work that day at 5:00 a.m. Next to Claimant's name is completely blanked – Claimant would have accepted then worked the extra work and would have received eight hours of pay at the punitive rate of pay in his next pay period for work performed that day.

The Carrier cannot claim that the reason why junior employee M. James worked was due to she was covering a supervisor vacancy. In January of 2000 in a letter to the Organization the manager of the department said the Carrier would no longer use the practice of stepping up (regularly assigned and partial except Lead Ticket Sellers) to fill vacancies of nonagreement employees.

There was no vacancy available that day and in the hours for which James worked in the Category of partial exempt of Lead Ticket Seller. The regularly assigned Lead Ticket Seller at 5:00 a.m. worked his own job that day in the Ticket Office. James work that day indicates that she sold tickets on the window for eight hours that day for her opening ticket issued at 5:12 a.m. until she closed her ticket window at 12:57 p.m.

The extra board in the ticket office at NY Penn Station does not cover the territory of vacancies of the partial exempt Lead Ticket Sellers – when one would become available. The extra board only covers bid/bump regularly assigned positions in the department.

When extra employees are used extra board will be established by agreement between the Corporation and the Division Chairman. The number of extra employees to be used and manner for which they will work will be determined between the Corporation and Division Chairman. No agreement exists between the two parties for the extra employees to cover the vacancies of the Lead Ticket Partial Exempt Seller positions - in the Ticket Office. The Organization has continued to request that such agreement be made to avoid any unnecessary claims having to be filed such as this one. The Carrier refuses to acknowledge such request.

Under Rule 2-A-1 (Bulletining and Awarding of Positions) all positions of bid/bump are advertised for new and vacant positions to be of more than thirty days duration. Rule 3-C-1 (Reducing and Increasing Forces) and Rule 1-B-1 of the Agreement apply to positions in the category of bid/bump.

Under Rule 1 – Scope paragraph C it clearly states that positions identified as partially excepted) as M. James position is and others Lead Seller positions in the Ticket Office as exempt from rules: 1-B-1, 2-A-1 and 3-C-1 shall not apply to these positions. Such listing clearly defines the two categories.

This claim has been presented in accordance with Rule 7-B-1 of the NEC Agreement and is in accordance with Rule 25 of the Off Corridor Clerks Rules Agreement.”

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 issue in this case is the Carrier's right to add a Lead Ticket Clerk position to work from 5:00 A.M. to 1:30 P.M. on Saturday, June 1, 2003. The Organization claims that the Carrier should not have added a Lead Ticket Clerk position, but rather a Ticket Clerk position and it should have been filled from the Extra Board. The Carrier assigned M. James to the position. The Organization claimed that J. Davis, who is senior to James, should have been assigned the position. A claim was filed that was denied by the Carrier at all levels and ultimately submitted to the Board for final resolution.

The Board reviewed the record. As a result, it has concluded that the Carrier acted within its rights in this instance. The Carrier chose for business reasons to establish a Lead Ticket Clerk position on the 5:00 A.M. to 1:00 P.M. shift on Saturday, June 1, 2002. It filled the position with a qualified Lead Ticket Clerk on an overtime basis. It had a right to establish the position and fill it as it did. The Organization's claim that the Carrier inappropriately established a Lead Ticket Clerk position rather than a Ticket Clerk position in this instance is not persuasive. When the need for extra work arose on the 5:00 A.M. - 1:00 P.M. shift on June 1, the Carrier chose to cover the situation with a Lead Ticket Clerk. That was appropriate.

The record does not contain any material that persuasively argues that the Carrier did not have the right to act as it did.

Form 1
Page 5

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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 30th day of January 2006.