

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37686
Docket No. CL-38288
06-3-04-3-255

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-13041)
that:

- 1) Carrier violated the Agreement on Saturday, November 10, 2001 when it used a junior employee to fill a vacant position (1st trick DAC Clerk).
- 2) Carrier shall now be required to compensate Joseph S. Forkin, Jr., eight hours pay (8 hrs. pay) at the time and one-half rate (\$18.34 per hour) for Saturday November 10, 2001, which he would have received had he been afforded the opportunity to accept the vacant position.

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.

A. Johnson held an Extra Board position with a seniority date of December 7, 2000. She worked a vacant position at the straight time rate on Saturday, November 10, 2001. Ms. Johnson had missed a day of work during the week and was eligible to work the Saturday assignment on a straight-time basis. J. Forkin, a regularly assigned employee with a seniority date of September 9, 1972, was on his rest day. He was available and willing to work the Saturday vacancy. It is contended that he should have been called as an overtime assignment. The instant claim was filed protesting the Carrier's action of assigning A. Johnson to the Saturday, November 10, 2001, vacancy, rather than Clerk Forkin, a more senior employee than Johnson. The claim was denied at all levels and placed before the Board for resolution.

The Board reviewed each party's position and the contract language on which their respective positions are based. As a result of that review, the Board concluded that Article 4(A)(3) and (A)(5) pertains to this dispute. See below:

"A. Appendix E to the parties' Agreement

**MEMORANDUM OF UNDERSTANDING BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION AND
ITS EMPLOYEES REPRESENTED BY THE BROTHERHOOD
OF RAILWAY, AIRLINE, AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION
EMPLOYEES.**

Article 4

**(A)(3) In the allocation of work protected by these extra boards,
extra employees, first out, whose use would involve payments at**

overtime rates will not be used so long as there are available other employees on the particular extra board involved who are qualified and available to perform the work at the straight-time rate.

(A)(5) When no extra board employees on the particular extra board involved are available at the straight time rate of pay, the work will be distributed as provided in Articles 5, 6, and 7 of this Agreement."

In the instant case, A. Johnson was an Extra Board employee from an Extra Board that protected the vacancy involved. She was eligible to work the assignment on a straight-time basis. Assigning her to the work was appropriate.

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.