

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37689
Docket No. CL-38422
06-3-04-3-377

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-13050)
that:

The Carrier violated the Amtrak NEC TCU Clerks Rules Agreement on June 29, 2002, when it allowed junior employee, R. Amedee, to work and receive at the punitive rate of pay for work performed on Usher Position U-41, hours beginning at 11:59 p.m. at New York Penn Station Customer Services Department. In doing so, the Carrier failed to offer the vacancy to the senior, available, qualified employee H. McGilvery.

Claimant H. McGilvery now be allowed eight hours at the punitive rate of pay on account of this violation.

The Carrier is in violation of Rules 4-A-4, 9-A-1, Appendix E - Articles 3-c, 5-a, 7 and other rules.

On June 29, 2002, regularly assigned employee for position of (U-41, V. McDaniels) called off sick to the Customer Services Offices for her assignment. The Carrier contacted Extra List employee, R. Amedee for his interest in the vacancy. When junior Amedee showed up for the assignment at 11:59 p.m. he was told he was not needed. The Carrier's person in charge advised him that since he was already there, and he had no train until later on at approximately 6 a.m. or after he could stay and work overtime. The Carrier had thought he had not worked that week, and did not have

his forty hours in. He had, and the Carrier did not call out overtime, for the position that evening, and elected to have him stay for overtime. Amedee did work that work week. He worked on Monday 6/24 at 6:30 a.m., 6/25 at 5:40 a.m., 6/26-6/27 were vacation days which count toward an Extra List Employee's forty hour guarantee. He then worked on 6/28 at 11:59 p.m.

Claimant McGilvery is senior to Amedee, was available to perform the work, and would have accepted the work.

This claim has been presented in accordance with NEC Rule 7-B-1 and Mediation Corporate Rule 25 and should be allowed and paid as requested."

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 review of the record of this case reveals that the Carrier used R. Amedee improperly when it assigned him to work on Saturday, June 29, 2002, on the 11:59 P.M. shift.

A more senior employee than Amedee should have been called to work the assignment. As it turned out, the appropriate employee who should have been called for the job was R. Johnson. The Organization in this instance filed a claim naming H. McGilvery as the Claimant.

As the claim progressed through the system, it became apparent that the claim was legitimate and had merit. It also became apparent that McGilvery was not the proper Claimant. When this was learned, the Carrier took the position that regardless of the merits of the claim, it should be denied solely on the basis that the Organization filed a claim on behalf of the wrong individual. The Organization took the position that it had the right to name whomever it chose as the Claimant.

After a review of the record, the Board concluded that the Organization's claim has merit and the Carrier should be required to settle the claim by paying the Claimant eight hours at the straight-time rate. This Award is not an endorsement of the Organization's position that it has the right to name any Claimant who it chooses. This Award is in the nature of a reminder to Carrier officials that they are responsible for offering overtime assignments to the proper employee in accordance with the appropriate contract clauses.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of January 2006.