

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37808  
Docket No. CL-38169  
06-3-04-3-85

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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-13029)  
that:

This claim is being filed to protect the integrity of the Amtrak-NEC Agreement.

The Carrier violated the Amtrak-NEC Agreement on July 19, 2002, when it made an exception to the Rule/s of the Agreement (9-a-1), then allowed employee A. Paul to suspend her duties as a Lead Ticket Seller, hours 10 a.m. to 6:30 p.m. to absorb overtime for regularly bid/bump position Job Symbol No. RTC-6, hours 11:30 a.m. to 8:00 p.m. at Newark Penn Station Ticket Office. In doing so, the Carrier not only had available employees to fill the vacancy but failed to call, work the incumbent to the position, RTC-6, A. Jones at the punitive rate of pay.

Claimant A. Jones now be allowed eight (8) hours at the punitive rate of pay on account of this violation.

On Friday, July 19, 2002, regularly assigned employee to symbol No. RTC-6, hours of 11:30 a.m. to 8:00 p.m. at Newark Penn Ticket Office, V. Gould called and spoke with Acting Supervisor (approx. 8:05 a.m.) B. Walker and informed her that he would not be in that day. Walker then immediately blanked the position, then called and informed acting Lead Ticket Seller, A. Paul, that Gould would not be

in, not to call the overtime out for the vacancy and that the position was blanked.

Lead Seller A. Paul worked that day and had assigned hours of 10:00 a.m. to 6:30 p.m. Symbol No. LTC-1 and at some point worked hours of RTC-6 that had been blanked and received overtime as a result of work performed. On Sunday Claimant's representative who works at Newark Penn Station as a Ticket Seller was informed that on Friday the Carrier had blanked Gould's position, there was not overtime called out for the vacancy, yet A. Paul had worked some hours on the job that was blanked then received overtime for work performed. Claimant's Representative then contacted A. Paul later that evening and asked her if she worked the vacancy (partially), was the position blanked, and did she receive overtime as a result of working on Gould's position until 8:00 p.m. She advised the representative that, yes the job had been blanked by Brenda, she did work until 8:00 p.m. that night on Vince's (Gould) job until he would have ended the tour, did receive overtime as a result of working overtime, and Vince's position was not called out at overtime.

Claimant A. Jones is regularly assigned to Job Symbol No. TCO-8, hours daily 11:30 a.m. to 8:00 p.m. with Thursday/Friday off. She is the incumbent to the vacancy and should have been given an opportunity to work the vacancy. No calls were made to her for her interest. Claimant's representative requested from the Carrier any call sheets that may have been made up for the vacancy. The Carrier advised him that no overtime sheet was made up. The representative then requested from the Carrier to peruse the payroll records for RTC-6 on July 19, 2002, to see if A. Paul had received any overtime that day. The Carrier indicated that no overtime existed that day, and when the payroll records were made available no record indicated that she worked that day, just eight hours at the pro-rata rate. The Organization waited one week, the requested from the Carrier's payroll department and then again from the Department, copies of the payroll records for July 19, 2002. It was then revealed that another request was made and that overtime was paid until 8:00 p.m. for work performed.

Claimant's representative was then given a copy by the Carrier of April's ticket work which revealed that she suspended her work at approximately 4:19 p.m. by opening her cash drawer at the same time that employee Gould would be going home.

The Carrier allowed Claimant's representative to peruse the Assignment, Manpower Sheets for that day and there was no indication that an emergency existed that day.

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

**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 Friday, July 19, 2002, Relief Ticket Clerk V. Gould marked off his regularly assigned 11:30 A.M. to 8:30 P.M. position. The Carrier blanked his position. Due to other moves of personnel that day, there was only one Ticket Clerk on duty from 6:30 P.M. on. A. Paul was working as Acting Lead Ticket Clerk from 10:00 A.M. to 6:30 P.M. At 4:19 P.M., Ms. Paul was told to open a cash drawer and sell tickets. She continued selling tickets beyond her scheduled quitting time of 6:30 P.M., concluding at 8:00 P.M.

The Organization argues that when Gould marked off, the Carrier was obligated to offer the vacancy to the Claimant who was the incumbent for that

position, on an overtime basis. The Organization recognizes that the Carrier has the right to blank a position, but urges that when the Carrier blanks a position, no work of that position may be performed. In the Organization's view, the Carrier had Ms. Paul perform work of the blanked position; therefore Ms. Paul rather than the Claimant improperly filled the vacancy and the Claimant is entitled to be compensated for the lost overtime opportunity.

The Carrier denies that Ms. Paul performed the work of the blanked Relief Ticket Clerk position. It urges that selling tickets is part of a Lead Ticket Clerk's regular duties and Ms. Paul merely performed the work of her position. The Carrier argues that Ms. Paul stayed beyond the 6:30 P.M. scheduled end of her shift to sell tickets because of an upsurge in business. The Carrier maintains that this situation is governed by Third Division Award 36385.

It is clear that the Carrier has the right to blank a position. However, when a job is blanked, no one may work it. The Carrier may not use another employee to perform some duties belonging to that position. See, e.g., Third Division Award 35947.

The parties dispute whether Ms. Paul was performing Gould's duties when she began selling tickets at 4:19 P.M. We need not resolve that dispute. We assume that when Ms. Paul began selling tickets at 4:19 P.M., she was performing the duties of her own Lead Ticket Clerk job. However, we find that her continuing to sell tickets after the scheduled end of her shift at 6:30 P.M. is dispositive of the claim.

The Carrier maintains that Ms. Paul simply continued performing the work of her job on an overtime basis due to an upsurge in business and relies on Third Division Award 36385. A comparison of the record before the Board in Award 36385 and the record developed on the property in the instant case belies Carrier's argument. In Award 36385, one and one-half hours after the Claimant had punched out and gone home, Ticket Clerks were inundated with airline passengers whose flights had been cancelled due to unexpected severe weather. To handle this unexpected rush of customers, which lasted until 8:00 P.M., the Carrier used every available employee qualified to sell tickets, including an employee who was junior to the Claimant. The Claimant sought payment for the overtime that the Organization argued should have been offered to her rather than the junior employee. The Board disagreed. It found that the Carrier had no way of contacting the Claimant when the rush of customers began and that it acted reasonably when it was presented with the unanticipated rush of customers.

In contrast, in the instant case, the Carrier pointed to no event, such as the unexpected flight cancellations to support its contention that Ms. Paul worked beyond the scheduled end of her shift in response to an upsurge in business. During handling on the property, the Organization submitted documentation in support of its contention that the volume of business on July 19, 2002, was not out of the ordinary for a Friday evening and that the need to have Ms. Paul work late arose not from an unexpected upsurge in business, but from the fact that due to the blanking of positions, there was only one Ticket Clerk on duty after 6:30 P.M. The Carrier did not respond to this proffer by the Organization.

Most significantly, during handling on the property, the Organization submitted a written statement from Ms. Paul in which she averred that her Supervisor expressly instructed her to stay late to work Gould's job. Here too, the Carrier did not respond. Thus, with the un-contradicted evidentiary record developed on the property, the Organization proved that, at least from 6:30 P.M. until 8:00 P.M., Ms. Paul worked the duties of the blanked Relief Ticket Clerk position. Consequently, the Carrier did not properly blank the position and cannot rely on the blanking to justify its failure to call the incumbent on an overtime basis.

**AWARD**

Claim sustained.

**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 21st day of June 2006.