

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38052
Docket No. CL-39140
07-3-05-3-596

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 TCU (NEC-2498) that:

The Carrier violated the Amtrak/TCU (NEC) Clerks Agreement on March 13, 2004 particularly Rule 1(e), 1-B-i, 4-A-4(1), 4-F-i, 5-E-i, 9-A-i, Appendix E-Articles 3c, 51, 6a, 8(B), 15a, Appendix H-Articles I-(b), IV(a/b), VI(a/b), IX, Mediation Agreement of 94 (Article III-Section 4(b) from (NEC) rule 7-B-i (Corporate Rule 25), and other when the carrier failed to fill ticket seller position, job symbol no. TC-18, hours beginning at 5:30 a.m. at Penn Station NY, NY, that was created by the regular assigned employee, B. Myers, having a hold-down on job symbol no. FCLR-1 in the Carrier's Acela First Class Lounge. Instead of properly filling the vacancy in accordance to Appendix E Articles 4, 5, 6 of the Agreement.

Claimant, Connie Pugh, now be allowed eight (8) hours at the punitive rate of pay based upon the Daily Ticket Seller rate on account of this violation on 3-13-04.

This claim has been presented and progressed in accordance with the provisions of Rule 7-C-i and Corporate Rule 25 of the applicable 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 March 13, 2004, the Carrier failed to fill a vacancy on Ticket Clerk Position TC-18 at New York City, Penn Station. The vacancy arose because the incumbent of Position TC-18 was granted a hold-down on First Class Lounge Representative Position FCLR-1 from March 4 - 15, 2004. The Carrier argues in its Submission that it did not fill the vacancy because there was no need to do so, as other employees were able to perform the overflow of work. However, Appendix E, Article 8(b) clearly provides that vacancies created by the incumbent employee taking a hold-down will be filled in accordance with Articles 4, 5, 6 and 7. The Carrier failed to do this. The claim will be sustained for eight hours pay at the straight time rate.

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 25th day of January 2007.