

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38076
Docket No. CL-38851
07-3-05-3-283

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 No. I

Claim of the System Committee of the TCU (NEC-2387) that:

The Carrier violated the Amtrak-NEC Agreement on September 21, 2002, when it made an exception to the Rule(s) of the Agreement (9-A-I, then under the false pretenses of “Blanked position” the Carrier blanked job symbol no. TC-11, hours 1:15 P.M. to 9:45 P.M., at Newark Penn Station Ticket Office, and used Lead Ticket Seller, B. Walker, (not) to maintain a Cash drawer that would only be opened if the Ticket lines become too long, (but) was used to sell tickets as a regular ticket seller (there are two regularly assigned ticket sellers on a daily basis on the afternoon tours from 1:15 P.M. to 9:45 P.M.) that day (in) order to avoid calling out overtime for the blanked position. In doing so, the Carrier failed to follow the provisions of filling a known vacancy by not offering the position to the senior, available, qualified, employee Appendix E - Articles 3-c, 5a, 6a, 7a, and Rule 4-A-4, and other rules.

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

The Carrier’s Lead Ticket Seller, B. Walker, began her work day at 10am. The Carrier and Lead Seller Walker had previously given the

regular assigned employee, A Paul, of symbol no. TC-11, hours 1:15p to 9:5pm the day off for Saturday September 21, 2002. The Carrier knew in advance that she would not be in and that this left only 1 employee to sell tickets for the afternoon shift that begins at 1:15p to 9:45pm. Every work day the Carrier maintains two employees on the same shift to sell tickets for eight (8) hours on the Ticket Windows. At approximately 2:05pm Walker decided that since the position had blanked - there was an error on the Carrier's part and that two people were needed to be on the window, and since there were not the normal two employees working - the other regularly assigned employee would need to get his bread and lunch in, she needed to open and cash drawer - and forget the other duties - that are listed as primary duties in her job description that day. She opened up at cash drawer at 2:05pm and began to sit at the ticket windows and sell tickets until 5:45pm (which she did) according to her work that day.

The claimant's representative was made aware of this and made an investigation into the matter prior to filing this claim. He was able to determine that the Carrier had used the disguise of "blank" for TC- 11, and used the Lead Seller to perform duties as a regular ticket seller, the Carrier did write blank next to the regularly assigned employee's name, and did not offer any calls to claimant or anyone else. No overtime call out sheet was made up for the known vacancy. Claimant Whitehead would have accepted the call, as it was her rest day, worked the vacancy, and would have received payment at the punitive rate of pay for eight hours of work performed. She did not receive any calls for the known vacancy.

This claim has been presented in accordance with Amtrak-TCU Rule 7-b-1, of the NEC Agreement and mediation agreement, Corporate Rule 25, and should be allowed/paid as presented.

Claim No. II

Claim of the System Committee of the TCU (NEC-2388) that:

The Carrier violated the Amtrak-NEC Agreement on October 10, 2002, when it made an exception to the Rule(s) of the Agreement, then under the false pretenses of "blanked position" the Carrier diverted employee, K. Williams from duties of Ticket Seller symbol no. TC/TAC-6, to the blanked position of symbol no. TC-AC-1, accounting position of employee, J. Venezia. In doing so, the Carrier failed to call, make available, and assign the first known vacancy that day to Claimant, an Extra List employee at Newark Penn Station Ticket Office.

Claimant John M C Jackson shall now be allowed an additional eight (8) hours at the prorata rate as a Ticket Seller on account of this violation.

The Carrier is in violation of 9-A-1, Appendix E-Articles 1a, 4a-5, 5a, 12a/b/e/f/g, 15a, and other rules. The Carrier should have read recent Award 36152 from Referee, Rodney E Dennis, before allowing such occurrence to have happen.

On Thursday October 10, 2002, regular assigned employee, J Venezia, whose preponderance of his work is Monday to Friday performing accounting beginning at 7am to 3:30pm, symbol no. TC/TAC-1, at Newark Penn Station Ticket Office called in sick for that day. The Carrier then blanked his position. At approximately 8am when employee, K. Williams came into work that morning at 8am to work to 4:30pm, whose work is preponderance is that to sell tickets on Mo, Thur/Fridays, then relieve in the accounting office on Saturday and Sundays - was told to work in the accounting office since Jim had called in sick. Williams symbol no. is TC/TAC-6, hours 8am to 4:30pm except Saturdays. She did as she was told.

Claimant Jackson is an regularly assigned to the Extra List as a Ticket Seller at Newark Penn Station. His symbol no. is EX-305.

The Carrier assigned then called claimant during the call period (1p to 3p) for the regularly Extra List employees at approximately 141pm that day to fill a 1pm to 3pm vacancy that day (TC- 10), at 1:1 5p to 9:45pm, due to the regularly schedule employee had called in sick that morning. When claimant arrived at work he noticed that employee, Williams was not on the Ticket Windows but was working in the Accounting Room at performing Accounting work - where Venezia would normally be. Claimant stopped and asked her had she worked all day as an accountant. She indicated she did not sell tickets but acting supervisor Walker had told her to perform Jims work that day. Claimant then continued on to punch in. He then was told immediately by coworkers that regularly assigned Venezia had called in sick and why had I not been called since I am on the Extra Board and the job Williams was working, was the first job out, further employee, Varella of the job that I had been called for, TC-10, had called in at 9:30 am or so.

Later when Claimant Jackson had the opportunity to take a break he inquired to see if Venezia position had been blanked, and if it had, why was he not called for the first known vacancy out. He found out the position had been blanked, but for some reason acting Supervisor Walker failed to follow the provisions of the Agreement, did not call claimant, and had only assigned him to the position he had worked that day, TC-10, hours 1:15p to 9:45pm.

Claimant Jackson is entitled to call for all known vacancies that the carrier intends to be filled. He was not called. He would have accepted the call, and worked the earlier tour that day.

The Carrier failed to seek the written change in the ways to fill known vacancies from the Organization as is required in Rule 9-A-1. The Carrier failed to follow the provisions in Appendix E-Articles,

1a, 4a-5, 51, 12,b,e,f,g and 15a which clearly spell out how known vacancies are to be filled.

The claim has been filed in accordance with NEC Rule 7-b-1 and Mediation Corporate Rule 25, and should be allowed and accepted 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 September 21, 2002, the incumbent occupying Ticket Clerk position TC-11, 1:15 P.M. - 9:15 P.M. called in sick. The Carrier blanked the position. The Organization concedes that the Carrier has a right to blank a position but maintains that when the Carrier exercises that right, it may not then divert another employee to perform the duties of that position to avoid overtime. The Organization maintains that on the date in question, the Carrier diverted the Lead Ticket Seller to perform the duties of the TC-11 position from 2:05 P.M. to 5:45 P.M. and violated the Agreement by not calling the Claimant to work the job.

We note that this case is unlike Third Division Award 37808. In that case, the Carrier blanked a Relief Ticket Clerk position from 11:30 A.M. - 8:30 P.M. but had a Lead Ticket Clerk assigned to a 10:00 A.M. - 6:30 P.M. shift sell tickets from 4:19 P.M. to 8:00 P.M. We found that when the Lead Ticket Clerk continued selling tickets beyond the end of her regular shift at 6:30 P.M., she was performing the duties of the blanked position. We sustained the claim, holding that the Carrier was

required to call the incumbent who was on his rest day on an overtime basis. In the instant case, however, the Lead Ticket Clerk did not continue selling tickets beyond her regularly scheduled shift.

On the property, the Carrier denied the claim, stating that “the blanking of the position has nothing to do with the lead ticket clerk maintaining an open drawer and selling tickets on an as-needed basis, which is part of their job responsibilities. They maintain a cash drawer in both busy times and in slow times, when the office is fully staffed or otherwise. The fact is there are times when a “lead” may stay on the window for an entire shift.”

The Organization introduced no evidence during handling on the property to refute the Carrier’s denial. The Organization continued to assert that the Carrier diverted the Lead Ticket Clerk to avoid overtime but assertions are not evidence. Accordingly, the claim must be denied.

On October 10, 2002, the incumbent of Ticket Clerk/ Accounting Clerk TC-TAC-1 called in sick. The Organization contends that after purporting to blank the position, the Carrier improperly diverted the employee occupying Ticket Clerk/ Accounting Clerk TC-TAC-6 to perform the duties of TC-TAC-1.

The record reflects that the incumbent occupying TC-TAC-6 worked her regular shift of 8:00 A.M. - 4:30 P.M. on October 10, 2002, whereas the shift of TC-TAC-1 was 7:00 A.M. - 3:30 P.M. We note that the Description of Duties in the bulletin for TC-TAC-1 is identical to the Description of Duties in the bulletin for TC-TAC-6.

Nevertheless, the Organization contends that on Thursdays, TC-TAC-6 sold tickets and TC-TAC-1 performed accounting duties. Therefore, in the Organization’s view, when the incumbent in TC-TAC-6 performed accounting duties on October 10, 2002, that employee was diverted to perform the work of TC-TAC-1. However, the Organization offered no proof that TC-TAC-6 was restricted to selling tickets on Thursdays. The bulletin does not restrict the position’s duties based on the day of the week. Accordingly, the Organization failed to prove that the incumbent of TC-TAC-6 performed anything other than the duties of her own position. The claim must be denied.

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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 21st day of February 2007.

