

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 38081
Docket No. CL-39136
07-3-05-3-592**

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-2309) that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement on particularly Rules 1-B-1, 2-A-1, 2-A-5, 3-C-1, and other rules when on 5/03/02, it refused to allow claimant, Mr. Dennis Riga to displace position of Inventory Control Clerk, Job Symbol No. ICC-3, hours 8am to 430pm, rate of pay \$148.48 per day located at 360 W 31 Street, NY, NY in the Engineering Department held by junior employee Sylvia Young.

The Claimant Dennis Riga now be allowed eight (8) hours pay at the pro-rata-rate of \$148.48 per day commencing 5/03/02 and continuing for each and every work day there on after on account of this violation. In order for this claim to terminate, Claimant must be permitted to displace the said position.

On 5/03/02 Claimant Riga showed up early (approximately 745am) in the Engineering Department at 360 W 31 Street in NY, NY to exercise his seniority, displace junior employee, S. Young, who was currently holding the position of Inventory Control Clerk, and then begin work on-time at 8am (Rule 3-C-1) paragraphs (c&d). The Carrier failed to allow claimant to try and satisfactory complete the assigned work (Rule 3-C-1) paragraph (h) at all.

At approximately 9:15 am the Immediate Supervisor for the Inventory Clerk position, Mr. Bruce Page, called claimants

Representative, the author of this claim, at his work location on the property of the Carrier and advised him that the claimant had been at his location for over an hour and was trying to make a displacement to his junior, S. Young who was currently working the Inventory Clerk position. He further stated that as I knew Claimant Riga had been disciplined, and had signed a discipline waiver stating the he could not work for approximately 14 months as a Mail Clerk - (that had delivered mail) in other of the Carrier's Buildings (but) not at the location of the Inventory Control Clerk at 360 W 31 Street. Furthermore, as a result of the discipline he could not work in the position of Inventory Clerk as the position required that the Clerk had to go into the building of which he had been disciplined for meetings, deliver mail to that building, and therefore could not allow the displacement. Claimant's representative requested from Page:

Why has he waited for over an hour to not allow the displacement, and now contact claimant's representative when he knows claimants representative phone number.

In the Job Bulletin (see enclosed) bulletin of the position where does it indicate that Claimant would have to leave the office and go to meeting into the other office building where he formerly worked, where did it indicate in the bulletin that he would have to deliver that mail to the other building particularly at 360 W 31 Street. And employee may have to attend meetings and some of the work may have to be performed in another building particularly at 400 W 31 Street with which he had been disciplined from (the building) being described is located a block away. And finally, why would the position again require mail delivery to the other building if the department in which the Inventory Clerk is located in (the Engineering Department) has two secretaries (and) one of the secretaries primary duties is to deliver outgoing mail for the department to the building from which he had been disciplined and to the Mail room from which Claimant worked previously. (The secretary position described) delivers the outgoing mail as a result of this author committing to this additional duty for this position with the Department Head at 360 W 313 Street.

Page could not answer any of the questions posed, but did however indicate that as much as the position does not describe the duties that he has described that are allegedly part of the duties of the position - he indicated that the bulletin described or had (duties assigned) on it and therefore, these duties would fall under that heading. Claimants representative advised Page that he did not have the bulletin in front of him - to peruse if the bulletin actually had these described duties (as assigned) that he (Page) had indicated it did, and that he would be leaving shortly to come to the work location to try and resolve the matter at hand so that a claim would not have to be filed and as soon as he could get a copy of the bulletin he would be there. He further requested that in the meantime it would be appreciated and would save to for each party to resolve that matter if Page could locate any paper work that would indicate - the clerk had attended such meetings that Page said it would, locate in internal letter within his department indicating that a meeting was held recently (with the time, date, etc.) and a change of the duties that now required that the secretary for the Engineering Department to no longer to have to deliver the outgoing mail to the 400 building, or simply just anything verifying that the position required the duties just advised by Page.

Approximately twenty (20 minutes later) claimants representative showed up and requested the information from Page as he had on the phone. Page said he had nothing at all - that would substantiate his claim of these duties that he had described on the phone - and that would prevent claimant from displacing junior employee Young. Claimant's representative then again requested that the two of them speak in private to resolve that matter. Page indicated he could not allow Claimant (Dennis) to work in his department and would not allow the displacement.

Claimants representative asked Page to look at the Standard Displacement Notice that claimant had presented while trying to displace junior employee. The notice did not indicate that the displacement would not be honored. Claimant's representative asked Page to sign his name - indicating that he was denying the displacement. Page indicated that he had to make a few phone calls

- before signing his name and writing Displacement denied. Approximately some 20 minutes later - he returned and said he would sign his name - and write Displacement denied - he did (see enclosed) Displacement Notice.

At approximately 1120am - claimant and his representative left the Engineering Department.

This was that last day in which claimants extension five (5) days to displace would end as a result of his discipline waiver (Rule 3-C-1) Paragraph (c) and as a result of Claimant not being able to displace and the time of the day (1120am) claimant not could no longer displace someone else that day - because positions that he could displace onto had already started that day - and a displacement requires that the employee be on time to assume the position, furthermore claimant was now going to loose a days pay as a result of everything. Claimants representative began to call the Carriers Labor Relations Department to try and get authorization for Claimant to try displace into another department of the events, the time of day - and if possible at least to try and get an extension of the displacement days until Monday. The representative called each of the Carriers Labor Relations Offices in the Northeast Corridor with no results. The representative called the Director of Labor Relations office in Washington DC none of the officers returned or picked up their phones. Each office had voice mail and a message was left on each. Finally, claimant and his representative went to Penn Station NY and visually notice and then walked up to the Carriers Assistant General Manager of the Northeast Corridor and explained what claimants needs were and what could he do. He asked the two to wait and see what he could do by making some phone calls. After a short time later - he informed claimant and his representative that he had been able to contact Labor Relations and that they had agreed to extend the displacement days until Monday. Claimants representative then requested if he would make claimant whole after everything that he had been through particularly with the now loss of eight hours of pay. He agreed to and has since done so.

Claimant has the right to displace on a position held by a junior employee, and in accordance with work Rule 2-A-5, is allowed thirty (30 days) in which to qualify on the position for which he/she has displaced onto. The Carrier did not allow for this to happen.

Claimant is senior to Young and should have been allowed to displace, he as not.

The Carrier had agreed to New Rule (Quality of Service) (NEW 32) which reads in part: The parties recognize that Amtrak's success depends on delivering quality service to our customers. It is the mutual goal of the parties to promote quality service in every phrase of Amtrak's operations. To meet this goal, the company and union pledge to cooperate in endeavors which promote and improve the quality of work, safety, efficiency, of operation and harmonious work relationships. The parties agree that everyone in this process - customers, employees, and supervisors - deserve respect, honesty, and the best service each time.

This claim has been filed in accordance with Rule 7-b-1 of the NEC Agreement and also in accordance with Rule 25 of the Off Corridor Clerks rule Agreement 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 April 25, 2002, the Claimant signed a waiver of his right to a formal Investigation concerning charges that he had violated Amtrak Standards of Excellence relating to Discrimination and Professional and Personal Conduct. The Claimant agreed to accept discipline which included, "Disqualification for a period of 15 months in all capacities of any position at 400 West 31st Street, New York City, New York." The Claimant then sought to exercise seniority to Job Symbol No. ICC-3, Inventory Control Clerk in Engineering at 360 W. 31st Street. The Carrier denied the Claimant's displacement request.

This claim turns entirely on whether Job Symbol No. ICC-3 had responsibilities that required the employee performing the position to go to 400 West 31st Street. If it did, the Claimant was clearly disqualified by virtue of the discipline imposed pursuant to the waiver. This simple question of fact should have been resolved on the property.

Unfortunately, the record developed on the property is not a model of a constructive and cooperative labor-management effort to resolve a simple factual issue. Rather, it reads like a childish shouting match with the Carrier asserting that the job involved contact with 400 W. 31st Street, the Organization accusing the Carrier of conjuring up bogus reasons to deny the Claimant his right to exercise seniority and demanding proof and the Carrier responding that the Organization should interview the incumbent and if it believed the reasons bogus produce a statement from the incumbent supporting its position. Apparently because the parties preferred to engage in a shouting match rather than a simple factual Investigation, the record developed on the property lacks what seems to us to be the two pieces of evidence most likely to shed light on this factual dispute: a statement from the incumbent of the position and a statement from her immediate supervisor as to what specific duties, if any, were performed that involved going to 400 W. 31st Street.

Of course, the Board lacks authority to engage in its own evidentiary investigation. We are limited to resolving the claim based on the less than ideal record developed on the property. That record contains the Bulletin for Job Symbol ICC-3. It lists the position's Location as "Engineering, 360 W. 31st St., New York, NY," and provides the following Description of Duties:

"Incumbent will assist the Sr. Manager-Vehicles and Equipment in processing requests. Will be responsible for processing invoices for

payment via Blanket Purchase Releases, Payment Requests, Material Requisitions and Limited Value Agreements (LVA). Will handle a large volume of faxing, scanning, copying and data input. Must prepare weekly and monthly reports on a timely basis. Must set up and maintain a filing system and handle incoming/outgoing mail. There will be heavy phone interfacing with Amtrak personnel and outside vendors. Must be proficient in AAMPS, Microsoft Windows and Microsoft Office. Must have excellent oral and written communication skills and perform other duties as may be assigned. Must have high school diploma, prefer two-year college or business equivalent. Must have 5 years office experience.”

The closest the Description of Duties comes to including work that would involve going to 400 W. 31st Street is its stipulation that the position “handle incoming/outgoing mail,” and “perform other duties that may be assigned.” During handling on the property, the Carrier asserted that the incumbent in the position regularly picked up and delivered mail to 400 W. 31st St. Assertions, however, are not proof. The Organization submitted a statement dated July 8, 2002, from a Secretary I at the Engineering Department stating that she was responsible “for picking up mail at the station,” but adding that she “no longer pick up the mail at 400 W. 31st Street.” The probative value of this statement is weak. Even if we assume that “the station” refers to 400 W. 31st Street, the statement does not give the time frame during which she picked up mail there. Furthermore, the fact that one employee picked up mail at that location does not necessarily preclude another employee from also performing that duty. However, it must be balanced against the total absence of any evidence, as opposed to assertions, in the record developed on the property that the position in fact performed duties at 400 W. 31st Street. Considering the record developed on the property, we are unable to find that the position involved performing duties at 400 W. 31st Street. Accordingly, the claim must be sustained.

AWARD

Claim sustained.

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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 February 2007.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

INTERPRETATION NO. 1 TO AWARD NO. 38081

DOCKET NO. CL-39136

NAME OF ORGANIZATION: Transportation Communications International Union

NAME OF CARRIER: National Railroad Passenger Corporation (Amtrak)

This matter has been returned to the Board on the request of the Organization for an Interpretation. In Award 38081, issued February 21, 2007, we sustained the claim and held that the Carrier violated the Agreement when it denied the Claimant's request to exercise seniority to Job Symbol No. ICC-3. The parties dispute the amount of monetary relief to which the Claimant is entitled under our Award. The parties agree that any monetary relief ends as of the date that Job ICC-3 was abolished. Their dispute centers on whether, for the period prior to the abolishment, the Claimant is entitled to eight hours' pay for each day until the abolishment, or is only entitled to the difference between what he would have earned had he been allowed to exercise his seniority as requested and what he did earn on other positions that he worked for the Carrier.

We considered the positions of the parties carefully. A request for Interpretation is basically a request for the Board to clarify its intent in issuing the Award. In the instant case, the Board's intent was to require the Carrier to make the Claimant whole monetarily, i.e., to place him in the same financial position as he would have been in had the Carrier not breached the Agreement and allowed him to exercise his seniority to Job Symbol ICC-3. The Board's intent was not to award the Claimant a windfall. Accordingly, we hold that the appropriate measure of the Claimant's monetary relief is the difference between what he would have earned on Job Symbol ICC-3 until abolishment of that position and what he earned during that period on other positions with the Carrier.

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Interpretation No. 1 to
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Referee Martin H. Malin, who sat with the Division as a neutral member when Award 38081 was adopted, also participated with the Division in making this Interpretation.

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

Dated at Chicago, Illinois, this 19th day of November 2009.