

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 38082  
Docket No. CL-39137  
07-3-05-3-593**

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-23 83) in behalf of Claimant W. Stephens.

The Carrier violated the Amtrak-NEC Agreement on Monday October 28, 2002, when it made an exception to the Rules Agreement without the proper signature that is required (Rule 9-A-1), failed to offer position of Baggage Counter Position, Symbol No. B-14, hours 2:30pm to 11pm at NY Penn Station Mail, Baggage, and Express Department to Extra List Employee, W. L. Stephens, Job Symbol No. EX203, then under the disguise of “Blanked position” the Carrier alleged that position of B-14 was blanked due to the regularly assigned employee had called in sick. The Carrier then used regularly assigned Baggage Counter employee, D. Carroll, Symbol No. BC-1, hours 1201 p to 8:31pm, to overlap and work the blanked position after his tour ended at 831p.m. to 11pm - thereby (suspending his work to absorb overtime - which he received that day).

Claimant W. L. Stephens now be allowed eight (8) hours at the pro-rata rate as a Baggage man on account of this violation.

The Carrier is in violation of Rule/s: (9-A-1), Appendix E - Articles 3-c, 4-(3), 12-a/e/f/g, Rule 4-C-1 and other rules.

This claim has been presented in accordance with Mediation Corporate Rule 25 and in accordance with NEC Rule 7-b-1 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 October 28, 2002, the employee regularly assigned to Baggage Counter B-14, with hours of 2:30 P.M. To 11:00 P.M. called off sick. The Carrier purported to blank the position. However, the Carrier had Baggage Counter employee BC-1, regularly assigned 12:01 P.M. - 8:31 P.M. work the position until 11:00 P.M. Thus the position was not blanked as the employee assigned to BC-1 worked the position through the end of the vacancy's shift. This case is governed by Third Division Award 37808. Because the Carrier did not blank the position, the Claimant should have been called to work the position. During handling on the property, the Carrier paid the Claimant for two and one-half hours that BC-1 worked beyond his regular assignment. The claim will be sustained and the Carrier shall compensate Claimant for five and one-half hours straight time pay, representing the eight hours for which he should have been called minus the two and one-half hours he already has been paid.

**AWARD**

Claim sustained in accordance with the Findings.

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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.**