

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38134
Docket No. CL-38985
07-3-05-3-454

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-2517) in behalf of Claimant Maurice Robinson.

On Wednesday, December 3, 2003, I was available to work at 5:00 am (Al Lepkowski's Usher Job, U-7) for overtime. I would have not conflicted with my own job that starts on Wednesdays at 3:00 pm. At the direction of Fred Bartoli, Manager of Station Operations (when) Andre Johnson, a Seating Area Attendant, was told to work his (5:00 am) Seating Area Job (but) work Al Lepkowski's Usher job all day until its conclusion. Andre Johnson did work it.

I am requesting eight hours at overtime for not being called.

Rules 4-C-1, 9-A-1, Appendix E, Article 5(A).”

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.

The basic facts underlying the claim in the instant case are not in dispute. On December 3, 2003, the incumbent of position U-7 at New York, Penn Station, called in sick. The Carrier blanked the vacancy but had a Seating Area Attendant, who held position CSR-12, perform some duties that the incumbent would have performed had he not called in sick. The Organization contends that, in so doing, the Carrier violated Rule 4-C-1, which provides:

“Employees will not be required to suspend work during regular hours to absorb overtime.”

The Organization argues that the Carrier did not really blank the position, but rather had the Seating Area Attendant suspend work and perform the duties of the purportedly blanked position to avoid calling the Claimant on overtime. We note that positions CSR-12 and U-7 have identical schedules and identical rates of pay. The “Description of Duties” for each position in their respective bulletins substantially overlap. The only duties mentioned in the U-7 bulletin not mentioned in the CSR-12 bulletin are, “compile up-to-date book on schedules and train information pertaining to the job,” “[m]anifests may be disseminated to Conductors and On-Board Service personnel where applicable,” and “be available to assist supervisors and desk clerk between train assignments and checking tickets.” It is unclear how significant even these differences are, because the duties listed in the bulletin for CSR-12 include “perform other duties as assigned.”

The Organization, as the moving party, has the burden of proof. Specifically, the Organization must prove that the employee occupying position CSR-12 was “required to suspend work,” i.e., was required to perform duties that fell outside the duties of his position. The record developed on the property is sparse. It does not reflect what specific tasks the employee occupying position CSR-12 performed on the date in question. We conclude that because the Organization failed to carry its burden of proof, 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 23rd day of April 2007.