

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40590
Docket No. CL-40009
10-3-NRAB-00003-070212
(07-3-212)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the General Committee that (GL-13179):

- (1) The Carrier acted in an arbitrary, capricious and unjust manner violating Rule 14 of the October 1, 2003 Wage and Rule Agreement and other related rules of the agreement, when it failed or refused to [the] Claimant a vacation (step-up) to fill a short vacancy from May 11, 2005 through May 15, 2005.**
- (2) The Carrier will now be required to immediately compensate the Claimant for four hundred fifty-nine dollars and fifty-six cents (\$459.56). This is the difference between what the Claimant earned and what the Claimant would have earned if the step-up had been 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.

The facts of the instant case do not appear to be in dispute. Beginning May 12 through May 15, 2005, R. Stellar, a Ticket Agent who provides rest day relief at Chicago down line stations (Naperville and Hammond) observed a vacation. Claimant B. Ficenec, a regularly assigned employee within the same seniority district, requested the opportunity to step-up to the vacation opening. The Claimant's request was denied and a junior guaranteed extra board employee filled the vacation absence instead, leading to the instant claim.

Rule 7, regarding guaranteed extra boards, is at issue in this case and reads, in relevant part, as follows:

- (a) Vacancies of thirty (30) calendar days or less duration are considered short vacancies and may be filled without bulletining. Nothing in this rule requires the Corporation to fill any short vacancy.
- (b) Guaranteed extra boards will be established and maintained to protect extra assignments and vacancies that accrue to employees in the seniority district, territory and departments covered by each respective extra board. Vacation vacancies not otherwise filled in accordance with the Non-operating National Vacation Agreement may be filled by using extra board employees."

The Organization contends that the Carrier violated the Agreement when it denied the Claimant the step-up vacation on May 11-15, 2005. According to the Organization, under Rule 12(b) of the National Vacation Agreement, if an employee is vacationing, that absence is to be filled by a regular relief employee. In the event that a regular relief employee is not available, as in the instant case, the principle of seniority shall apply. In this case, the Claimant had the most seniority. According to the Organization, the Claimant should have been assigned to the step-up

vacation. The Organization thoroughly rejects the contention by the Carrier that Rule 7 is the relevant Rule. As a remedy, the Organization requests that the Claimant be compensated in the amount of \$459.56, which is the difference between what the Claimant earned and what the Claimant would have earned if the step-up had been allowed.

Conversely, the Carrier contends that it acted properly in not awarding the step-up to the Claimant. According to the Carrier, the relevant rule in this case is Rule 7, the Guaranteed Extra Board Rule. In addition, the Claimant's step-up request would have caused the Carrier to assume a greater expense which is in violation of Article 12(a) of the National Vacation Agreement. In addition, the Claimant's request contained incorrect dates. The Carrier contends that the burden is on the Organization to prove that the Carrier violated the Agreement; it has not been able to do so. The Carrier asserts that it did not act inappropriately when it did not allow the Claimant to step up and asks that the claim be denied in its entirety.

After a review of the evidence and positions of the parties, the Board finds that the Organization has not met its burden of proof. According to the Carrier, because the step-up was not filled pursuant to the National Vacation Agreement (i.e., with a relief worker or through 25% work redistribution) the Carrier was well within its rights to fill the vacation absence by using an extra board employee, which is permitted under Rule 7(b) and is precisely why guaranteed extra board employees are employed. In addition, the Carrier is correct in this case, that by utilizing the Claimant, the Carrier would incur greater cost. See Third Division Award 33152. Thus, in this case, the Claimant had no demand right to hold down the vacation absence. The Carrier's decision on the property is in accordance with Rule 7(b) of the Agreement and the National Vacation Agreement. Therefore, the claim is denied.

AWARD

Claim denied.

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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 27th day of August 2010.