

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31088  
Docket No. CL-30961  
95-3-92-3-898

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman 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 Organization (GL-10894) that:

- (a) Carrier violated the Agreement between the parties when on June 22, 1991, they failed or refused to call Ticket Agent John K. Payne for work and, in lieu thereof, used junior employee Monique Taylor.
- (b) Carrier shall now be required to compensate Ticket Agent John K. Payne for eight (8) hours at the overtime rate of pay for June 22, 1991, as a result of Carrier's violation of the Agreement."

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 waived right of appearance at hearing thereon.

In this claim, the Organization contends that Carrier violated Rule 14 of the Agreement when Carrier failed to call and work Claimant who was senior, qualified and available, but instead, used a junior employee for the vacancy.

The Organization asserts that its request for eight hours at the punitive rate is not excessive nor beyond the jurisdiction of the Board as a remedy for Carrier's failure to call Claimant to perform the disputed work. It argues that Claimant lost his rightful opportunity to perform the overtime work and is entitled to the punitive rate for this loss.

Accordingly, and for the foregoing reasons, the Organization asks that the claim be sustained.

Carrier argues that it did not violate the Agreement. It maintains that neither the Claimant nor the Organization presented any proof that the Claimant was the proper Clerk to be entitled to the work in question, or that the Claimant was available for the work if he had been so entitled.

In addition, Carrier submits that the overtime worked by the junior employee was in direct violation of Rule 14 of the parties' Agreement. It argues that the junior employee was not authorized to call anyone or assign herself the overtime without notifying Carrier personnel of the vacancy. In Carrier's view, it should not be penalized for the junior employee's failure to follow published instructions regarding the authorization of overtime. Accordingly, for these reasons, Carrier asks that the claim be denied.

After a review of the record evidence, we conclude that the claim must be sustained, in part. The evidence indicates that the junior employee should have called Claimant to work the overtime assignment. She did not, but instead worked the overtime herself, receiving the extra compensation. It is clear that the Carrier was not aware of the junior employee's actions at that time. Therefore, as it is evident that the junior employee acted outside of her agency, Claimant is entitled to be paid for a call.

It must be noted that in proper cases, the junior employee's actions could result in disciplinary consequences, especially when the caller (that person responsible for calling employees to work overtime) performs the work instead.

Accordingly, and for the foregoing reasons, the claim is sustained, in part.

#### AWARD

Claim sustained in accordance with the Findings.

**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 1st day of September 1995.