

Award No. 31857
Docket No. CL-32341
97-3-94-3-286

The Third Division consisted of the regular members and in addition Referee Fred Blackwell 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-11135) that:

- (a) Claim is hereby presented to the Carrier in behalf of Claimant Wade Dalka, account Carrier violated the Amtrak Rules Agreement, particularly Rules 14 and other rules, as amended by the September 6, 1991 Agreement, when it failed to properly call Claimant for work at the Depew, NY, Ticket Office on July 25, 1993 from 3:30 PM to 12:00 AM, and August 1, 1993, and the Exchange Office on July 5, 1993, from 3:30 PM to 12:00 AM, who was available to cover this work and instead allowed and permitted junior clerks to work on the claim dates.
- (b) That Claimant W. Dalka now be allowed eight hours pay at the appropriate punitive rate for the dates claimed above until this violation is corrected. Claimant is qualified, was available and should have been called and worked.
- (c) The claim is presented in accordance with Rule 25 and should be 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.

This dispute arises from a claim requesting compensation account of the Carrier's failing to call the Claimant for short vacancies on July 5, July 25, and August 1, 1993, and instead calling a junior Ticket Clerk for the vacancies.

The claim is progressed under Rule 14, Overtime, which, as pertinent in this dispute, reads as follows:

"If overtime is necessary before or after assigned hours, employees regularly assigned to the job category at the location shall be given preference in seniority order; the same principle shall apply to working extra time on holidays. Vacancies, including vacancies of rest day relief positions not filled by (e) above, shall be filled on a day-to-day basis in seniority order by employees regularly assigned to the job category at the location who are available."

On all three claim dates, the Claimant worked his position at Niagara Falls until 3:30 P.M. The short vacancies in question had tours of 3:30 P.M. to 12:00 A.M. at Depew and Exchange Street Stations, Buffalo, New York. The record reflects that Niagara Falls is 23 miles from Depew and 29 miles from Exchange Street, in Buffalo, New York.

In view of the conflicting hours of the Claimant's assignment, which ended at 3:30 P.M., and the 3:00 P.M. starting time of the targeted short vacancies at the Depew and Exchange Street Stations, in the context of the distance that the Claimant would be required to travel from Niagara Falls to reach the Depew and Exchange Street Stations, it cannot be said that the Claimant was available for the short vacancies at Depew and Exchange Street Stations. Therefore, the conflicting hours of the Claimant's assignment and the targeted short vacancies, coupled with the distance the Claimant would be

required to travel from his regular assignment at Niagara Falls to the short vacancies, preclude approval of the claim and a denial award is in order.

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 4th day of March 1997.