

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32212
Docket No. CL-31733
97-3-94-3-38**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11003) that:

(a) The Carrier violated the Clerks’ Rules Agreement effective July 21, 1972, as revised, particularly Rules 6, 7, 10, 11, 14 and other rules when effective August 3, 1992, they force assigned Claimant Jensen (from an unassigned status to a Janitor position) located at the Turbo Facility, Rensselaer, New York, which was advertised with an improper rate of pay and as a result was re-advertised with the proper rate of pay. As a result, the Claimant has suffered a loss in earnings, which would have otherwise been earned by him as an unassigned employee and were instead earned by junior unassigned employees.

(b) Claimant Jensen should now be allowed the difference in earnings, between the rate of the Janitor position, which he was improperly assigned to, and the earnings of the most senior unassigned employee, who was also junior to Claimant, commencing August 3, 1992 and continuing for each and every day thereonafter, until this violation has terminated, on account of this violation.

(c) Claimant Jensen would have remained the senior, qualified and available unassigned employee had the Carrier not force assigned him to a position that was improperly advertised.

(d) This Claim has been 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.

The Janitor position at the maintenance facility at Rensselaer, New York, was posted on June 10, 1992 at the daily rate of \$81.01. As a result, Claimant was force assigned to the position as he was the senior unassigned employee. The dispute herein involves a claim by the Organization that the Bulletin posting the position had the incorrect rate of \$81.01 instead of the correct rate of \$86.48 per day.

In its Submission the Organization objected to Carrier force assigning Claimant to the position. It also seeks the difference in earnings between the rate of the Janitor position which it asserts Claimant was improperly assigned to and the earnings of the most senior unassigned employee, who was also junior to Claimant.

Carrier, on the other hand, devoted the majority of its Submission in support of its position that it had the right to force assign Claimant to the posted position. Carrier acknowledged, however, that the posting did contain the incorrect daily rate.

We conclude that the appropriate remedy for this case is to pay the Claimant the difference in the wages between what the position should have paid and what the position was posted as for the entire period Claimant was on the job. This constitutes the equitable solution. We note that Claimant did eventually bid off to a higher rated position.

In all, the claim is sustained for the lost difference in wages for the period that Claimant held the position posted on June 10, 1992. In all other respects, the claim is denied.

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 17th day of September 1997.