

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32268
Docket No. CL-31941
97-3-94-3-308**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 TCU (NEC-1001) (GL-11051) that:

(a) The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement particularly the Extra List Agreement and other rules when it failed to call and work Claimant R. Saccu for the 6:00 a.m. to 2:00 p.m. Ticket Sellers position at the Hartford Ticket Office on June 29, 1989, and instead assigned and permitted junior clerk J. Spindle to work that position on that day at the punitive rate of pay.

(b) That Claimant R. Saccu now be allowed 8 hours pay at the punitive rate of pay for June 29, 1989, on account of this violation.

(c) Claimant is senior, is qualified, was available and should have been called and worked in accordance with the provisions of the Extra List Agreement.

(d) This claim has been presented in accordance with Rule 7-B-1 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.

A factual dispute in this claim is whether the Claimant was an unassigned Ticket Seller on the Extra List, as alleged by the Organization, or was the holder of regular position BG-209 and thus "not subject to the provisions of the Extra List Agreement," as initially alleged by the Carrier. However, the Carrier at a later point stated it "followed the provisions of the extra board assignment" when it called the Claimant for a vacancy.

Whatever the status of the Claimant, the Board finds examination of the applicable provision of the Extra Board Agreement is sufficient to resolve the matter. The Organization cites Article 4(A) of Appendix E - Extra Lists, which reads as follows:

"1) When two or more vacancies having the same starting time on the same day are open, the senior qualified extra employee will be given his preference of choosing the position he desires to work, provided the other extra employees are qualified for the remaining vacancies."

The record reveals the following: A vacancy existed at the Springfield, Massachusetts, ticket office for 6:00 A.M. to 2:00 P.M. on June 29, 1989. On June 28, the Claimant was called and accepted the assignment. He subsequently worked the assignment and was paid at the overtime rate.

According to the Carrier's undisputed assertion, another vacancy for the same date and hours subsequently became available at Hartford. An employee junior to the Claimant was called and worked the assignment at the same overtime rate as was paid the Claimant.

The Carrier argues that the Claimant was not considered for the Hartford vacancy, because he was already committed to service in Springfield. The Organization

argues that Claimant, as senior employee, should have been offered his choice between the two openings and would have preferred to exercise his seniority for the Hartford position.

Under the particular circumstances, the Board finds no violation of the seniority rights guaranteed in Article 4(A)(1). The vacancies did have "the same starting time on the same day." The Organization failed to show, however, that the vacancies were "open" simultaneously. Had this been shown, clearly the Claimant should have been offered his choice. The record, however, shows only that one vacancy (Springfield) was "open" and properly filled by the Claimant. When the Hartford vacancy later became "open," the Claimant was already committed to an overtime assignment during the hours of the Hartford vacancy and thus reasonably considered unavailable.

The parties' Submissions refer to Public Law Board No. 4304, Award 47. Suffice it to say the Board finds that Award concerns similar but distinguishable facts and Rules and thus was not considered as instructive here.

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 7th day of October 1997.