

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33175
Docket No. CL-33710
99-3-97-3-160**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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-11709) that:

The following claim is hereby presented to the Carrier by Claimant, Tom Berg, account the Carrier violated Rule(s) 14F and other rules of the July 21, 1972 agreement between Amtrak and TCU, including all revisions, when they assigned and permitted Andrew Pelletteri to perform the duties on position symbol CCR-5, tour of duty 6:30 am - 3:30 pm on October 27 and 28, 1995, in the Commissary at Rensselaer, NY.

Claimant now be allowed 8 hours of pay for each date at the rate of time and one-half, based on the pro-rata daily rate of \$116.00 due to this violation.

Claimants regular position is Commissary Clerk, tour of duty 6:30 am - 3:30 pm at the rate of pay of \$116.00, at Rensselaer, NY.

Claimant was qualified, was ready, willing and able to perform the duties claimed, had the Carrier permitted him to do so. Mr. Pelletteri was awarded Job Symbol MBER-2 effective October 20, 1995 and was then awarded Job Symbol COMR-3 effective October 27, 1995.

This claim has been presented in accordance with Rule 25 of the above mentioned Agreement 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.

At issue in this case is the application of Rule 6 (c), Rule 6 (f), and Rule 14 (f) of the Agreement between the Parties. Those provisions read as follows:

“6(c) An employee awarded a bulletined position shall be transferred to such assignment within ten (10) calendar days after the date of the award. If the employee is not transferred within the specified time limits, he will be paid the higher rate of the two positions and any additional actual and necessary expenses plus \$3.00 per day for each work day that he is withheld from such assignment beyond the time limit above described.”

“6(f) When an employee bids for and is awarded a position, his former position, if not abolished, shall be declared vacant and bulletined.”

“14(f) 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.”

At the time this dispute arose, Claimant was assigned to a regular Commissary Clerk position at Amtrak's Albany/Rensselaer, New York, station. By letter of November 12, 1995, the Organization filed a claim alleging that Amtrak violated the Agreement when it utilized junior Clerk A. Pelletteri to work a 6:30 A.M. to 3:30 P.M.

commissary position at Rensselaer, New York, at the straight time rate. The Organization sought eight hours pay at the punitive rate.

By letter of December 27, 1995, the Carrier denied the claim, stating that under Rule 6(c), above, it had the right to hold Extra Clerk Pelletteri on the position at issue at the straight time rate rather than utilize Claimant at the overtime rate. The denial was appealed and subsequently progressed up to and including conference on the property.

It is the position of the Organization that Claimant was entitled to be called because Extra Clerk Pelletteri had previously been assigned to Position MBER-2 on October 20, 1995 and on October 27, 1995, was awarded Position COMR-3. By assigning Pelletteri to position CCR-5 on the dates in question, Carrier prevented him from covering the Position of MBER-2 that he was previously awarded. The Carrier maintains that there are no prohibitions against its action, either in the Rules cited, or in any other part of the Agreement. It asserts that it had the right to hold Pelletteri at the straight time rate on the vacancies at issue, rather than calling Claimant in for overtime.

In its correspondence with the Organization, the Carrier has stated without contradiction that the work involved was not the same as the work to which Claimant was assigned. Nor is it work for which he was qualified. In the absence of persuasive argument to the contrary, and in light of the lack of support of the Agreement language cited for the Organization's position, the Board has no choice but to deny the instant claim.

AWARD

Claim denied.

Form 1
Page 4

Award No. 33175
Docket No. CL-33710
99-3-97-3-160

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 25th day of March 1999.