

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33401
Docket No. CL-34171
99-3-97-3-668**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11846) that:

(a) The Carrier violated the TCU/NRPC NEC Clerical Agreement in particular Rules 4-A-1, Appendix E, Extra List Agreement and others when it called and used an unqualified employee, Dorothy Trower to work eight (8) hours at the overtime rate as an Assignment Clerk on Saturday, September 2, 1995, at Philadelphia, PA, 30th Street Station. Ms. Trower is assigned to a Verification Clerk position and never worked or qualified as an Assignment Clerk. The Carrier failed to call and use Andrew Felden who had held and qualified on an Assignment Clerk position. Felden was qualified and available and had notified the department of his availability and telephone number.

(b) Claimant A. Felden now be allowed eight (8) hours pay at the overtime rate for September 2, 1995, when the above mentioned agreement was violated.

(c) Claim is in order and should be allowed in accordance with Rule 25.”

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 application of Rule 4-A-1 -- Day's Work and Overtime -- at paragraph (f), and Article 7 (A) of Appendix E. Those provisions read as follows:

"4-A-1 (f) Where work is required by the Corporation to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.

Article 7(A) In the event a vacancy cannot be filled under Article (5) and (6) above, the overtime will then be offered to the senior, qualified, available regular or extra clerk from those areas covered in Article (1) of this Agreement who have made application for same."

It is the position of the Organization that Claimant met the criteria in Part 4-A-1 (f) because he was the senior qualified available employee at the location requiring the use of an overtime employee. Moreover, the Organization maintains that he also met the criteria set forth in Article 7, (A), because, in the absence of an Extra List Agreement, and there is not one at this location, he was the senior qualified available employee who had made written application for overtime work.

The Carrier asserts that it complied with all the provisions of the Agreement. It notes that Claimant was not assigned to the office where the overtime work was necessary and had no demand right to it. Since Claimant was not assigned to the office where the overtime work was necessary, he had no demand right to it.

Throughout the correspondence on the property it is clear that the Claimant was both the most senior available employee and was qualified to perform the work at issue. The language of Article 7(A) is clear: in the absence of an existing Extra Board, work

must be offered to the most senior, qualified, available employee. In this particular case, moreover, Carrier has confirmed in its correspondence that the work was normally performed by Assignment Clerks. Claimant was qualified as an Assignment Clerk and, although he was listed on the Extra List at the Block Operator's office on the date of the claim, there was no work for him on the date at issue.

The Organization has not shown, however, that Claimant was eligible for overtime or penalty pay. On the contrary, since the record indicates that he had not completed 40 hours in the week in question, the pay rate at which he properly would have been paid is the pro rata rate. The Board will not ignore long standing tradition on this and other boards and grant Claimant a "windfall" beyond what would have been his proper rate of pay on the date at issue.

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 13th day of July 1999.