

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34056
Docket No. CL-34475
00-3-98-3-87**

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-11936) that:

- (a) The Carrier violated the July 21, 1972, as revised, Amtrak-Corporate Clerical Rules Agreement, particularly Rules 6, 12, 13, 15 and other Rules, when on March 26, 1996, they improperly advertised position, Lead Ticket Clerk/Baggageperson (Relief), Symbol, HUDR-4, location, Hudson, New York with the wrong hours of 2:00 p.m. - 10:30 p.m., (Tuesday and Wednesday), instead of the proper hours of the position that was being relieved on Tuesday(s) and Wednesday(s) which are 2:00 p.m. - 11:00 p.m. The Carrier also failed to show the assigned meal period, which is a specific requirement of the aforementioned Rules, particularly Rules 6(a) and 15(b).**
- (b) The Carrier attempted to hide the improper advertising of the involved position by posting a Bulletin showing the change in hours to reflect the correct hours (still not addressing the meal period issue), instead of readvertising the position and allowing others, including Claimant Howard, the right to exercise their Seniority (Bidding) with the accurate information being shown on the position advertisement.**
- (c) The Carrier awarded position HUDR-4 to Junior Employee C. Cvetic, effective April 13, 1996, (shown on Bulletin No.: 96-12).**

- (d) Claimant Howard is Senior to Employee Cvetic and was qualified, willing and would have bid the involved position had the Carrier advertised same with the proper hours and assigned meal period. In fact, Claimant Howard and Clerk Robert Hall brought this matter to Supervisor Tom Kirk's attention in an effort to correct the error, prior to the position being awarded but, such efforts were to no avail.
- (e) Claimant Howard should now be allowed an additional eight (8) hours punitive pay, based on the daily rate of \$127.68, commencing April 13, 1996 and continuing for each and every work day, thereafter (5 days per week), on account of this violation.
- (f) In order to terminate this claim the Carrier must advertise the involved position with the proper hours and assigned meal period, which will afford the employees including Claimant Howard, the opportunity to exercise their Seniority Rights with complete knowledge of the specifics for the position involved.
- (g) This claim has been presented in accordance with Rule 25 and should be allowed.
- (h) Claim is further made that Carrier violated Rule 25 when the foregoing claim was not timely denied at the initial level."

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.

In the claim at hand the Organization alleges that the Carrier violated Rules 6, 12, 13, 15 and other Rules of the Agreement when on March 26, 1996, it improperly advertised a Lead Clerk/Baggage person position for Hudson, New York. Additionally, the Organization asserts that the Carrier attempted to hide the mistake by posting a corrected bulletin instead of properly re-advertising the position. The Organization claims that Claimant Brian Howard and others were not allowed to exercise their seniority with accurate bidding because of this improper posting, resulting in less senior employee C. Cvetic being awarded the position on April 13, 1996. Further, the Organization alleges that the Carrier violated Rule 25 when the claim was not timely denied at the initial level. As remedy, the Organization seeks punitive pay for Claimant Howard and re-advertisement of the involved position.

The Carrier submits that on March 26, 1996, Bulletin No. 96-12 was advertised for job HUDR-4. The bulletin listed the location, title of position, rate of pay, hours of assignment, days of assignment, days of rest, meal period assignment, new position or vacancy, whether the position was permanent or temporary, and a description of duties. The Carrier's position is that Claimant Howard opted not to bid for this position on two separate occasions and additionally chose not to exercise his right to displace C. Cvetic when Claimant's position was abolished at the end of his tour of duty on April 10, 1996. In a Bulletin dated April 24, 1996, C. Cvetic was notified that effective April 30, 1996, her hours for the relief position would change from 2:00 P.M. to 11:00 P.M. on Tuesdays and Wednesdays.

The crux of the Carrier's denial of this claim is its assertion that the Claimant in this dispute did not bid or bump for the position when the opportunity to do so was there, nor did the Claimant suffer any wage loss due to the alleged violations. Additionally, the Carrier submits that Claimant Howard is an improper Claimant. The Carrier asserts that the work hours in question, and the alleged violation of the Agreement between the two parties to which the Carrier does not concede, are those of C. Cvetic who would have been the proper Claimant.

The Organization alleges several Rules violations. Rule 6 reads in pertinent part:

“... Bulletin will show location, title and brief description of duties, rate of pay, assigned hours of service, assigned meal period, assigned rest days....”

A review of Bulletin 96-12 indicates that it lists all the specifications of the position in compliance with Rule 6 of the Agreement. We also find it reasonable that the Carrier listed “per assigned shift” for the meal period assignment because this is a relief position that assumes the meal periods of the position it is relieving. Therefore, we do not find evidence in the record that supports the Organization’s assertion that the Carrier violated Rules 12, 13, and 15.

The Organization also alleges that Rule 25 was violated. Rule 25 reads in pertinent part:

“... (a) All claims or grievances other than those involving Discipline (Rule 24) must be presented in writing by or on behalf of the employee(s) involved, to the supervisor within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the supervisor shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee(s) or the representative) in writing of the reasons for such allowance. If not so notified, the claim or grievance shall be allowed as presented.”

The Carrier submits that the documentation was mailed prior to the 60-day time limit clearly stated in Rule 25, but no clearly visible evidence is offered to support this. The time spread was just one day over a 60-day limit. While this may appear on its face to be a de minimus violation, and the Board does not find that it is a fatal error in this case, time limits are to be taken seriously by both Parties to the Agreement. The Carrier is cautioned that if it continues to disregard the clear language of the Rule, it does so at its peril.

After careful review of the record, we find that the Organization has not provided sufficient evidence to establish a violation of the Agreement. There is no showing that the Claimant would have bid for the position in the first place. In addition, he chose not

to exercise his displacement rights on the position when his own position was abolished. Because there is no showing he would have actually bid, the issue is essentially moot. Accordingly, the instant claim is denied.

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 25th day of May, 2000.