

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35195
Docket No. CL-35402
00-3-99-3-279**

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-12332) that:

- I. Claim of the System Committee of the TCIU (AM992) on behalf of Claimant, Jerry Paulsen:**
 - (a) The Carrier violated the Clerk’s Rules Agreement effective July 21, 1972, as revised, particularly Rules 7, 14, 26, Appendix E and other Rules, when on November 11, 1997 (Veterans Day Holiday), during the 2nd Trick tour-of-duty, location Amtrak commissary, Rensselaer, NY, they allowed Junior Employee, Gregg Shanno to work for what should have been overtime as a Commissary Clerk, failing to instead call and use the Claimant;**
 - (b) Claimant Paulsen should now be allowed eight (8) hours overtime punitive pay based on the appropriate rate of pay on account of this violation;**
 - (c) Claimant Paulsen is senior, qualified, was available and should have been called to cover the involved position in accordance with the Rules mentioned above;**
 - (d) This claim is presented in accordance with Rule 25 and should be allowed.**

II. Claim of the System Committee of the TCIU (AM993) on behalf of Claimant J. Heilig:

- (a) The Carrier violated the Clerk's Rules Agreement effective July 21, 1972, as revised, particularly Rules 7, 14, 26, Appendix E and other Rules, when on November 11, 1997 (Veterans Day Holiday), during the 2nd Trick tour-of-duty, location Amtrak commissary, Rensselaer, NY, they allowed Junior Employee Dave Gould to work for what should have been overtime as a Ticket Clerk, failing to instead call and use the Claimant;**
- (b) Claimant Heilig should now be allowed eight (8) hours overtime punitive pay based on the appropriate rate of pay on the account of this violation;**
- (c) Claimant Heilig is senior, qualified, was available and should have been called to cover the involved position in accordance with the Rules mentioned above;**
- (d) This claim is presented in accordance with Rule 25 and should be allowed.**

III. Claim of the System Committee of the TCIU (AM994) on behalf of Claimant I. Dulay:

- (a) The Carrier violated the Clerk's Rules Agreement effective July 21, 1972, as revised, particularly Rules 7, 14, 26, Appendix E and other Rules, when on November 11, 1997 (Veterans Day Holiday), during the 1st Trick tour-of-duty, location Amtrak commissary, Schenectady, NY, they allowed Junior Employee, John Monette to work for what should**

have been overtime as a Ticket Clerk, failing to instead call and use the Claimant;

- (b) Claimant Dulay should now be allowed eight (8) hours overtime punitive pay based on the appropriate rate of pay on account of this violation;
- (c) Claimant Dulay is senior, qualified, was available and should have been called to cover the involved position in accordance with the Rules mentioned above;
- (d) This claim is 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.

On November 11, 1997, the Veterans Day Holiday, G. Shanno, D. Gould, and J. Monette, all unassigned employees junior to the Claimants on this day, were posting positions at the Carrier's Schenectady and Rensselaer, New York, locations. They each were paid eight hours pay at the pro-rata entry rate for their posting on the day in question. In letters dated December 17, 1997, the Organization filed claims in behalf of the Claimants, J. Paulsen, J. Heilig, and I. Dulay that alleged the work performed by the unassigned junior employees should have accrued to the Claimants. Carrier

Supervisor M. W. Hollister denied the initial claims in letters dated January 14, 1998. Subsequent appeals were denied as well.

The Organization alleges that the Carrier violated RULE 7 - SHORT VACANCIES, RULE 14 - OVERTIME, RULE 26 - VACATION, HOLIDAY & GROUP INSURANCE; UNION SHOP AND DUES DEDUCTION, APPENDIX "E," and other Rules of the Agreement by using unassigned junior employees in posting status to perform work, which by contract, should have accrued to the Claimants. The Organization also contends that the junior employees were working alone and paid overtime, hence they could not have been posting the positions. The Organization asserts that in the cases of Claimants Paulsen and Dulay, the posting employees were used when the Claimants were available. In the case of Claimant Heilig, Gould was allowed to post when the incumbent was on an assigned rest day. The Organization states it agrees with the Carrier's definition of posting in a letter by R. O. Denzel dated April 3, 1998, which reads in pertinent part, "While posting, an employee is learning the duties of a position by working alongside of a regularly assigned employee." However, the Organization contends that the Trainers of those posting the positions, the Claimants, should have been on-duty on the day in question.

The Carrier's position is that the three junior employees were posted to the positions in addition to regular employees on the day in question for the purpose of training. Additionally, the Carrier contends that since they had less than one month of service at the time, they were not fully qualified to perform the duties of the positions they were posting on. Further, the Carrier asserts that management has the prerogative to determine how to utilize its work force.

After careful review of the record the Board finds no evidence of a Rule 7, 14, 26, Appendix E, or other Rule violation as alleged by the Organization. The record does not contain evidence that indicates that the posting employees were occupying the positions, performing work accruing solely to the Claimants, or working alone thus not in training as the Organization asserts. There is also no clear evidence that the Claimants were available to perform work on the day in question or that the Claimants lost any compensation. Accordingly, the Organization has failed to meet its burden of proof.

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 20th day of December, 2000.