

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35449
Docket No. CL-35670
01-3-99-3-560**

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-12421) that:

Please consider this as a claim of the District 1089 Protective Committee on behalf of Joseph O'Connor, former incumbent of position CW-834. The Carrier has violated the current agreement between the National Railroad Passenger Corporation and the Transportation Communications International Union, particularly, but not limited to Rule 2-A-1.

As per Rule 2-A-1 the Carrier bulletined position Baggage/Mail Handler, South Station, Boston, BG-836, 7:00 a.m. - 4:00 p.m. This position was advertised to include in the job description a requirement to cover train 448 at South Station Boston whose arrival time is after 4:00 p.m. This position was awarded to Mr. O'Connor by bulletin dated May 20, 1997 to be effective May 28, 1997. Mr. O'Connor was not released to this position until June 23, 1997 thus depriving him of the higher pay due him as a result of being the incumbent of this position.

Rule 2-A-1 clearly states in part “If the employee is not transferred within the specified time limits, he will be paid the higher rate of the two positions.” The specified time limits referred to in this rule is ten (10) days and therefore during the period June 8, 1997 through June 23, 1997 the Carrier should have paid Mr. O'Connor the earnings of the job he was awarded plus \$5.00 per day for each day he was withheld from his new position.

A check of Carrier records will show that Mr. O'Connor would have been required to work an additional 34 hours at overtime as the incumbent of this position. Therefore claim is made for the additional pay as follows:

6/8/97 - 30 minutes	6/16/97 - 4 hours
6/9/97 - 2 hours 10 minutes	6/17/97 - 5 hours 30 minutes
6/10/97 - 1 hour 25 minutes	6/18/97 - 5 hours
6/11/97 - 2 hours 55 minutes	6/19/97 - 3 hours 40 minutes
6/12/97 - 4 hours	6/22/97 - 3 hours 10 minutes
6/15/97 - 1 hour 45 minutes"	

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.

The Claimant entered employment with Amtrak on August 20, 1985. At the time of the dispute, the Claimant was employed as a Commissary Clerk (Catering Services Worker) at South Station, Boston, Massachusetts. The Claimant was covered under the Northeast Corridor Clerical Agreement. The Agreement was made effective on July 21, 1972, covering clerical, other office, station, and storehouse employees.

The Carrier bulletined a position of Baggage/Mail Handler at the South Station, Boston, BG-836, from 7:00 A.M. - 4:00 P.M. The job description included a requirement to cover Train 448 at South Station, Boston, whose arrival time was after 4:00 P.M. The Claimant applied and was awarded with the position. The Claimant was held in his former position, CW-834, until June 22, 1997 and was then transferred into the baggage room position on June 23, 1997. The Organization originally filed this claim

on August 16, 1997 citing violation of Rule 2-A-1 of the current Agreement requesting compensation for the higher pay rate during the delay of employment.

The Carrier paid the Claimant the higher daily straight time rate of the new position and the \$5.00 per day penalty. The main issue of this grievance is the overtime compensation requested by the Organization. The dispute revolves around the interpretation of Rule 2-A-1 and whether the intent was for an employee to be compensated at the hourly rate of pay or for the overall earnings of the higher position. Rule 2-A-1 of the current Agreement reads as follows:

“(d) An employee, in service, awarded a bulletined position shall be transferred to such assignment within ten (10) calendar days after the effective 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. *Following contract amended clause to \$5.00 per day.”

The Organization contends that the Carrier violated Rule 2-A-1 of the current Agreement when it failed to release the Claimant into his newly awarded position during the time specified by the clause and then denied him of the higher rate of pay. The time period for calculation proposed by the Organization should commence on June 8, 1997 due to the ten day specified time frame and end on the transfer date of June 23, 1997. The Organization finds the intent of Rule 2-A-1 (d) to mean, when one is awarded a given position and the person's employment is delayed that person is entitled to the higher rate of pay between the two positions. Within the baggage position, in the Organization's opinion, the Claimant would have worked 34 hours of overtime to meet the 448 Train that arrived after 4:00 P.M. on a number of days requiring compensation beyond the straight hourly rate. Therefore, in the Organization's opinion, the compensation due to the Claimant should be calculated on the overall earnings of the baggage position not just the straight hourly rate. The Organization contends that the correct remedy in this case is for the Carrier to pay the difference of the straight hourly rate and the overall earnings of the baggage position.

The Carrier contends that the claimed violation of Rule 2-A-1 is absolutely without merit. The Carrier asserts that the Claimant was compensated according to

Rule 2-A-1 and received the daily straight time rate plus the \$5.00 per day penalty for the days between June 8 - 23, 1997. The Claimant, in the Carrier's opinion, is not entitled to any compensation beyond the above requirements. The Carrier contends that Rule 2-A-1 only requires that payment of the hourly rate difference between the two positions, not for the employee to be compensated for the overall earnings of the new position. The Carrier argues that compensation of overtime would fall under overall earnings and therefore, would not qualify under Rule 2-A-1.

The Carrier further contends that it is their right as management to schedule its work forces in accordance with service requirements. It illustrates this point through submission of two arbitration Awards.

The Carrier's second argument for dismissing the claim is that the Organization has failed to meet its burden of proof as required by numerous arbitration tribunals. The Organization has failed, in the Carrier's opinion, to demonstrate how any Rules or Agreements were violated and to provide any evidence to support their position.

The Carrier's final argument asserts the Claimant is not entitled to any additional compensation. In the Carrier's opinion, the Claimant has been paid the appropriate amount for being held in his former position. The Carrier contends it is Amtrak's managerial prerogative pursuant to the Rules Agreement to place the Claimant where he was needed due to service requirements at the time. Therefore, in the Carrier's opinion, the correct remedy in this case is to dismiss the claim because the Organization failed to produce any evidence that the Claimant lost or is entitled to any additional compensation as a result of Amtrak's actions in this dispute.

The Board finds that the Carrier did not violate Rule 2-A-1 of the current Agreement. The Board finds that it is the sole discretion of the Carrier to place their workers as needed, so long as their actions are not proscribed by the Collective Bargaining Agreement. In this case, they are not. In this situation, there was no showing that the Carrier intentionally delayed the transfer to avoid placing the Claimant as a pretext for depriving him of overtime. The Organization also failed to meet its burden of persuasion in presenting evidence that the Claimant lost or was entitled to any additional compensation beyond the hourly rate, daily penalty and the expense reimbursement. In light of the foregoing, the Board finds that there is no basis on which to sustain the claim.

**Form 1
Page 5**

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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 26th day of April, 2001.