

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 35476  
Docket No. CL-35946  
01-3-99-3-949

The Third Division consisted of the regular members and in addition Referee Andr e Y. McKissick 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-12511) that:

I am filing claim on behalf of Mr. J. Ramos, Lead Crew Dispatcher, North Station, Boston, MA. This claim is for eight (8) hours at time rate of time and one-half for the following dates: January 3 and January 4, 1998.

Carrier violated the Agreement when it allowed Mr. Bullerwell to come in on 1<sup>st</sup> Trick on both days listed above which are rest days following his vacation to do vacation lists and bids. Mr. Ramos should have been called to perform this work.

The rules violated are Appendix C Inclusive, Appendix D Inclusive, Appendix E, Articles 4, 5, 6, 7, 8, 9, 10 and all other rules of this Agreement.”

**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 thrust of the Organization's contention is the impermissible use of an employee still in his vacation period and concurrently being utilized on the two rest days following the end of the work week vacation day. It is the Organization's contention that the Claimant should have been called to perform his job as Lead Crew Dispatcher on the days at issue. In support of the claim, the Organization points to the Extra List Agreement which sets forth the procedure to be followed in filling a vacancy or providing coverage for extra work.

The Carrier rebuts the Organization's contentions by asserting that there were no other qualified Crew Dispatchers who could perform vacation schedules and bid awards on those particular days. More importantly, the Carrier argues that the Claimant was unavailable as he was sick from December 31, 1997 until 11:30 P.M. on January 4, 1998. Thus, the Carrier reasons that he is an improper Claimant. In addition, the Carrier notes that the Organization has not produced any evidence to prove that the Extra List Agreement has been violated.

The Board finds that the evidence reveals that the Claimant was unavailable on January 3, and January 4, 1998, the same days he made a claim for compensation due to illness for "December 31, 1997, January 1, January 2, January 3, 1998" and then the Claimant "elected to mark up to 11:30 P.M. on January 4, 1998." (Amtrak Exhibit 2) The record also reflects that the Organization never furnished any proof to rebut the Carrier's denials of this claim. (Amtrak Exhibit 3-6) Thus, the Board must deny the pending claim, as the Organization failed to produce sufficient evidence to substantiate its claim.

#### **AWARD**

**Claim denied.**

**Form 1**  
**Page 3**

**Award No. 35476**  
**Docket No. CL-35946**  
**01-3-99-3-949**

**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 22nd day of May, 2001.**