

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35949  
Docket No. CL-36291  
02-3-00-3-524**

**The Third Division consisted of the regular members and in addition Referee Peter R. Meyers 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-12631) that:**

- 1. The Carrier acted in an arbitrary and capricious manner and in violation of Rule 14, ARTICLE VI - OVERTIME of the MEDIATION AGREEMENT of September 6, 1991, and possible other related rules of the Agreement, when on or about July 4, 1996, it failed or refused to call Claimant (Ms. Patricia DiMarco) to work as a Stat Clerk in New Orleans on a holiday and allowed a junior employee to work the position.**
- 2. The Carrier shall now be immediately required to pay the Claimant eight (8) hours at the pro rata rate of a Stat Clerk at the overtime rate of one-and-a-half 1 1/2.”**

**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 August 29, 1996, the Organization filed a claim on behalf of the Claimant, contending that a junior employee was called to work a Stat Clerk position at eight hours of overtime on July 4, 1996, instead of the Claimant. The Organization argues that the Claimant is a senior employee qualified as a Stat Clerk and trained in uniforms and that she expressed her desire to work on the July 4, 1996 holiday. The Organization thereby claims that the Carrier violated the parties' Agreement, specifically Rule 14; the Mediation Agreement of September 6, 1991, Article VI - Overtime; and other related Rules. The Organization maintains that the Claimant made it clear that she wanted to work overtime, but was bypassed because someone else did not take the time to follow proper call-out procedures. The Organization argues that the junior employee's position was blanked on the date in question and that she requested and was granted overtime, but that the Claimant was entitled to perform said work because she was a senior employee who requested to perform the same overtime. The Organization further asserts that the Carrier's contention that the junior employee performed the work of a Uniform Coordinator on the date in question is in error because no such position exists. The Organization argues that the Carrier is trying to defend its position by giving the junior employee a fictitious title in order to justify the work she performed on July 4, 1996, when it in fact belonged to the Claimant. The Organization argues that the junior employee filled the job of a Stat Clerk on the date in question while her regular assigned position of a Secretary was blanked.**

**The Carrier denied the claim. The Carrier maintains that on July 4, 1996, the Claimant's position was blanked and that the junior employee's position was not. The Carrier contends that there is no record of a Stat Clerk vacancy on the date in question and that if such a vacancy occurred, it was blanked. The Carrier maintains that no Stat Clerk position was worked on July 4, 1996, and that because that is the entire basis of the Organization's claim, it must fail. The Carrier argues that the junior employee is identified as a Uniform Coordinator and properly fulfilled her regular duties on the date in question and was paid overtime because it was a holiday. In addition, the Carrier argues that the relief sought is excessive because the Organization seeks the punitive rate of pay where no provision calls for it under the parties' Agreement. The Carrier contends that if it is found that the Claimant is entitled to relief because of the wrongful assignment of an employee, that relief should be at the pro-rata rate rather than at an overtime or punitive rate.**

The Board reviewed the record in this case, and finds that there is substantial evidence in the record to support the finding that the Carrier violated Rule 14 when on the July 4, 1996 holiday, it failed or refused to call the Claimant to work as a Stat Clerk in New Orleans and allowed a junior employee to work the position. Therefore, the claim must be sustained in part.

The record reveals that the Claimant's position was blanked on July 4, 1996. The record is also clear that contrary to the statements of the Carrier, Secretary Gail H. George's position was also blanked that day. It is also clear from the record that the Claimant complied with the overtime Rules and let her Supervisors know that she would work overtime on positions outside of her regular category. Rule 14(f) states the following:

- “(f) If overtime is necessary before or after assigned hours, employees regularly assigned to the job category at the location shall be given preference in seniority order; the same principle shall apply to working extra time on holidays. Vacancies, including vacancies on rest day relief positions not filled by (e) above, shall be filled on a day-to-day basis in seniority order by employees regularly assigned to the job category at the location and who are available. In the event that employees waive the right to overtime, the company shall direct employees in the job category at the location, in reverse seniority order, to perform the overtime and holiday work.”

The above was modified in Article VI - Overtime as follows:

- “(a) Rule 14(e) of the Corporate Agreement will remain in effect. However, Rule 14(f) would be changed as follows: After offering overtime to full-time employees regularly assigned to the job category at the location in seniority order, overtime would then be offered:
  - (1) to all full-time qualified employees at the location, including unassigned headquartered at the location, who have made their desire known to work overtime outside of their job category;

- (2) to all qualified part-time employees regularly assigned to the job category at the location in seniority order;**
- (3) to all part-time qualified employees at the location who have made their desire known to work overtime outside of their job category;**

**In the event that overtime cannot be filled on a voluntary basis, the company shall direct full-time and part-time employees in the job category at the location, in reverse seniority order, to perform the overtime and holiday work.**

**After exhausting all employees at a location, when the company elects to offer overtime to employees at another location, the principle of seniority shall govern and employees accepting such assignments shall receive travel time and mileage payments.**

- (b) Under the Northeast Corridor Agreements, after offering overtime in accordance with existing agreements, part-time employees may be offered overtime."**

**The record is clear that on the date in question, the Claimant held a Secretary I position at the same location. We find that the Carrier failed to abide by the above Rule by using Secretary Gail H. George, an employee with less seniority than the Claimant, to fill the position for that one day. Although the Carrier's defense to the claim was that George's position was not blanked, there is evidence in the record that, in fact, George's position was blanked on that date. The Board finds that George filled the job of Statistical Clerk and performed the duties of that job on the day in question and, under the Rules, that job for that day should have been assigned to the Claimant.**

**Once the Board has determined that the Carrier violated the Rule in this case and the claim will be sustained, we next must look at the relief being sought by the Organization. In this case, the Organization is seeking payment to the Claimant of eight hours at the time and one-half rate of Stat Clerk. The Board reviewed the record and it is clear that the Claimant was paid for the holiday. Consequently, we can find no basis to have her paid at the penalty rate. Therefore, we order that the claim be**

**sustained in part and that the Claimant be paid eight hours at the straight-time rate for the Carrier's violation of the Rules in this case.**

**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 20th day of February, 2002.**