

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36383
Docket No. CL-36948
03-3-01-3-535

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis 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-12768) that:

The Carrier violated the Amtrak-Northeast Corridor Clerks’ Rules Agreement particularly the Extra List (Appendix E) Article 3-C, 5a, 6a, Rule 4-C-1, and other rules when it failed to call and use Claimant, B. Ehrhard, to perform the duties of her assigned position, NY Metropolitan Lounge Attendant, Symbol No. FCLR-2, hours 6:30 a.m. to 3:00 p.m., located in NY Penn Station, Metropolitan Lounge, on March 19, 2000, rate of pay \$18.08 per hour, and instead assigned and permitted Clerk, Ms. Uez, to perform that work on this day.

In permitting Ms. Uez, to perform this work, Ms. Uez, suspended her work of 10:00 a.m. to 6:30 p.m. According to the Carrier’s own Call-out and Manpower Sheets, it is evident that the Carrier did not want to fill the position normally worked eight hours 5 days a week, when it did not place the vacancy on its Vacancy List of Positions, does not have the time to which the persons who called out the vacancy, how many attempts made to the Claimant, who called out the vacancy, but rather choose to even further discriminate the vacancy, by filling the vacancy when it has “BLANKED” next to the shift.

Claimant B. Ehrhard, now be allowed 8 hours pay at the punitive rate of \$18.08 per hour, for March 19, 2000, on account of this violation. Claimant was available, and being the incumbent of position, FCLR-2, is entitled to perform the work of her position on her rest day at the punitive rate of pay in accordance with the provisions of the Extra List Agreement and other Rules.

This claim has been presented in accordance with Rule 25, Grievances, from the OFF CORRIDOR AGREEMENT, dated June 1998, 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.

Claimant B. Ehrhard holds a five-day position as a New York Metropolitan Lounge Attendant, 6:30 A.M. to 3:00 P.M. On March 19, 2000, the Claimant's rest day, Clerk Uez, a New York Metropolitan Lounge Attendant, was regularly scheduled to work her assignment from 10:00 A.M. to 6:30 P.M. The employee who normally covers the Claimant's position on her rest days was on medical leave. In order to cover the first few hours of the Claimant's shift, Ms. Uez was directed to report to work at 6:30 A.M. She worked three and one half hours overtime on March 19, 2000.

Since the Claimant was not called in on her rest day and Uez was given the overtime, the instant claim was filed. The claim was discussed and denied at all levels and progressed to the Board for final resolution. The Board has reviewed the record and has concluded that the Organization has not demonstrated that by calling Uez in three and one half hours early, any clause in the controlling Agreement was violated. The Carrier, in calling the overtime in this instance, relied on the October 15, 1998, Local Agreement, signed by H. V. Rogers for the Carrier and Shirley Robertson, TCU-Division Chairperson, for the Organization. The October 15, 1998, Agreement was abrogated at the request of the Organization on September 1, 2000. The instant claim was filed on April 9, 2000, during the period that the October 15, 1998, Agreement was in force.

The clause in the Agreement that supports the Carrier's action in this instance reads as follows:

"Overtime of less than four (4) hours shall continue to be offered to the senior available employee continuous with their shift."

That is what took place here.

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 18th day of February 2003.