

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36892  
Docket No. CL-37478  
04-3-02-3-527

The Third Division consisted of the regular members and in addition Referee M. David Vaughn 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-12918)  
that:

The Carrier violated the Amtrak-Northeast Corridor Clerk’s rules Agreement, particularly Rules(s) the Extra list, 1, 2-A-2, 4-F-1, Appendix E, Article 5, paragraph (A) and other rules that may apply when the Carrier failed to work Claimant John J. Giblin on the position of Ticket Seller/Receiver, Symbol No. AC804, at the Boston South Station on January 21st, 2001.

Claimant John J. Giblin now be allowed eight (8) hours pay at the punitive rate of \$18.35 per hour for January 21st, 2001.

This claim has been 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.

The Claimant to this dispute was working as a Ticket Clerk at Boston South Station when the dispute arose. He is covered under the provisions of the parties' Northeast Corridor Clerical Agreement.

On Sunday, January 21, 2001, a Ticket Receiver vacancy occurred on one of the Claimant's assigned rest days. The Carrier opted to blank the position since there were other Ticket Seller/Receivers on duty to handle the business. The Organization protests in its letter of February 19, 2001, that the Carrier failed to call the Claimant on overtime to fill the vacancy of selling tickets and receiving Conductor deposits. Instead, maintains the Organization, it used employee L. Monk who was already working her own position.

By letter dated April 12, 2001, the Carrier responded that all Ticket Clerks/Agents perform ticket receiving work and that no one specific agent on duty on the claim date was designated to perform ticket-receiving duties. It contends that, on the claim date, there were eight Ticket Clerks on duty and five of them accepted remittances. The Organization replied, by letter dated May 20, 2001, that the Carrier diverted an employee filling one position to another position and that two different positions – Ticket Agent and Ticket Receiver – were involved. It cited Appendix E, which, it says, precludes the Carrier from diverting an employee from the employees regular position, since the process for filling vacancies is clearly spelled out in Appendix E and diversions is not mentioned as one of them.

Rule 4-F-1 of the Agreement establishes the rates and positions, as follows:

“Established rates of pay, or positions, shall not be discontinued or abolished and new ones created covering relatively the same class of

work, which will have the effect of reducing rates of pay or evading the application of these rules, nor shall the transfer of rates from one position to another be permitted.

This does not apply in the case of employees paid 'incumbent' rates."

Appendix E, Articles 5 and 6 of the Agreement sets forth the Carrier's obligation for filling extra assignments and vacancies that occur as follows:

**ARTICLE 5**

"(A) When it is necessary to perform work of a five-day assignment on the rest days of that assignment and the work is basically the same as that performed during the work week and during the same relative hours and no qualified extra board employees are available at the straight time rate, the incumbent of the five-day assignment will be offered the overtime first. Likewise, in the event the relief employee is absent the vacancy will first be offered to the incumbent of the position being relieved. Should the incumbent refuse the overtime it will then be offered to the senior, available, qualified extra or regular employee in the territory whose position is protected by the particular extra board involved."

**ARTICLE 6**

"(A) Regular and extra work assignments not covered by Article (5) above will be offered to the senior, qualified, available extra or regular employee in the territory whose position is under the jurisdiction of the extra board involved."

The Organization filed this claim on behalf of the Claimant which was denied by the Carrier. By letter dated September 14, 2001, the General Chairman progressed the dispute to the Director, Labor Relations. The claim was denied by the Carrier on November 14, 2001. The dispute was then referred to the Board.

The Organization argues that the Carrier violated Rule 4-F-1 and Appendix E of the Agreement when it failed to call and use the Claimant for overtime January 21, 2001. It contends that the Carrier has the contractual responsibility to use the proper employee when filling a vacancy and to call the proper employee to fill a position, when it neglected to do in this case. It contends that, instead of calling the Claimant, who was the senior, qualified, and available employee for this work, the Carrier blanked the position and subsequently filled it with employee L. Monk who was already on duty performing her own job, thereby violating its obligation under the Agreement.

Although it acknowledges that the Carrier has the right to blank a position, the Organization contends that the Carrier's own Memorandum states it was creating an "exclusive window for remitting cash fares, and obtaining change and cash fare tickets. . . ." It argues that employee Monk was diverted from her regular assignment to fill the position for the "exclusive window."

Finally, the Organization argues that the Carrier's actions were a clear violation of the Claimant's seniority, an important right well recognized by the parties. It protests that the Carrier has defied the spirit and intent of the Agreement. The Organization urges that the claim be sustained.

The Carrier argues that the claim of violation of Rule 4-F-1 and Appendix E is without merit. It asserts that the Organization presented no proof that the Claimant was available to work the overtime. The Carrier further contends, with respect to the merits, that Ticket Clerks are required to be qualified to receive train remittances. It contends it has consistently taken the position that, on a daily basis, Ticket Clerk/Agents at the Boston location receive MBTA and other remittances in connection with their ticket selling duties and that there is no evidence to the contrary.

The Carrier further argues, therefore, that the Organization failed to meet its burden of proof in establishing a violation, contending that "mere assertions" are not proof. Citing authority, the Carrier urges that, because the Organization has not submitted any proof that violation occurred with respect to the claim, it must be denied.

The Carrier further argues that, with regard to alleged "diversion" of employees from one position to perform the duties of another position, the Organization has progressed and lost cases similar to the instant dispute. The Carrier asserts that the Organization has failed to prove a violation occurred and that harm resulted.

Finally, the Carrier argues that the Organization has not shown that the Claimant suffered any loss in compensation on the claim date. It contends that January 21, 2001, was one of the Claimant's assigned rest days and that there is no provision in the Agreement to justify the payment sought. The Carrier urges that the claim be denied.

The Board is persuaded that the claim must be denied. The evidence establishes that there was insufficient work on January 21, 2001, to justify filling the vacant Ticket Receiver position. The Carrier, therefore, made an appropriate fiscal management decision that filling the vacant Ticket Receiver position on January 21, 2001, was unnecessary. The Carrier did not ask any Ticket Agent to perform any work not covered by their positions. Each of the Ticket Agents on duty that day were trained and qualified to perform Ticket Receiver duties. In addition, the record establishes that no single Ticket Agent was designated to cover the vacant position - five of the eight Ticket Agents accepted remittances on that day.

Contrary to the Organization's claim, the evidence does not establish that any employee was diverted to fill the vacant position and no vacancy was "filled" by less senior employees. The Award concludes the Carrier's decision not to fill the vacant position was appropriately within its managerial functions and did not violate the provisions of the Agreement. The Organization has presented no evidence to the contrary.

**AWARD**

**Claim denied.**

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**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 25th day of February 2004.**