

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37026
Docket No. CL-37578
04-3-02-3-683

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-12946)
that:

Claim of the System Committee of the TCU (TCU-TC-332-TC) in behalf of Pat Held for the Carrier's violation of the NRPC TCU (TC Division Agreement, specifically the Extra List Rule 6-A-1 paragraph (1) line (2)) Each Extra List will protect TC Agreement work within the confines of the Extra List territory. There will be one headquarters for each Extra List.

On the following days Claimant was directed to work off his assigned Philadelphia Tower Extra List to cover a position on the Detention Clerk List during the hours shown, causing a violation of the Agreement:

<u>Date</u>	<u>From - To</u>
April 17, 2001	11:00 PM - 7:00 AM
April 18, 2001	11:00 PM - 7:00 AM
April 19, 2001	11:00 PM - 7:00 AM
May 1, 2001	11:00 PM - 7:00 AM
May 17, 2001	7:00 AM - 3:00 PM
May 22, 2001	11:00 PM - 7:00 AM

May 23, 2001	11:00 PM - 7:00 AM
May 30, 2001	11:00 PM - 7:00 AM
June 5, 2001	11:00 PM - 7:00 AM

It should be noted that on May 3 of 2001, the Assistant District Chairman spoke with Lavern D. Miller, Director of Labor Relations, about this situation, and he agreed that this practice was clearly a violation of the agreement.

The Claimant was directed to fill the position because the Carrier could not find anyone to fill this position at the rate of time and one half. Because of this, the Claimant should be entitled to be paid the rate of time and one half at the operator's rate for the position worked.

This claim has been filed in accordance with the agreement 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 Board reviewed in detail the arguments of both parties and the comments they made in support of their positions. As a result of this review, the Board discovered that there is insufficient solid evidence in the record to support a

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reasonable decision. The Board has concluded that the instant case should be dismissed for lack of sufficient evidence on which a decision can be based.

AWARD

Claim dismissed.

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 May 2004.