

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37028
Docket No. CL-37712
04-3-03-3-47

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-12958)
that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement, particularly the Extra List (Appendix E) Articles 3, 5A, 6A, Rule 4-C-1 and other rules when it failed to call and work Claimant, Bruce Phillips, for position of Express Clerk, Job Symbol No. ACRB-1, Hours 2:45 pm to 11:15 pm, at NY Penn Station, Mail Baggage, and Express Department, at New York, NY, on May 17, 2001, and instead diverted (George Sawyer) Mail/Clerk Messenger, Job Symbol No. MC/M-3 Hours of 1:00 pm to 9:30 pm from his regular assignment and required him to fill the vacancy on position of ACRB-1.

Diverted Employee, G. Sawyer, was given a direct order to fill the position, and as such, did do what he was told. He would then grieve later, as is in this case. Mr. Sawyer performed many of the functions as a Express Clerk, due to the Carrier blanking the position to avoid calling out overtime. Mr. Sawyer had Express Bills as those Waybills that are attached. There are number as: (SA) 2118799, (SA) 2118798, just for starters signifying that he did perform his own tasks as well as those of the Express Clerks.

Claimant B. Phillips was never contacted for this vacancy - as on the attached Carrier call out sheet, there is no notation as to what time

he was called, whom may have made a first/second call to him, what position was being called. Claimant Phillips would have accepted the call, worked the vacancy, and would have received time and one-half for the work performed. No call was made.

Claimant Phillips now be allowed eight (8) hours at the punitive rate of pay as a Express Clerk for May 17, 2001 on account of this violation.

Claimant Phillips is senior, available, is qualified and should have been called and worked in accordance with the provisions of the Extra List (Appendix E) Articles 3, 5A/6A, Rules 4-C-1, and other Rules under the current collective bargaining agreement.

This claim has been presented under the provisions of Rule 7-B-1 of the Off-Corridor Clerks Rules Agreement and should be allowed and accepted."

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 Bruce Phillips was working as a Mail/Baggage Clerk in Penn Station, New York, New York, when this dispute arose. It appears from the record that on Thursday, May 17, 2001, there was a vacancy on an Express Mail/Clerk position, 2:45 P.M. to 11:15 P.M., in Penn Station, New York City. George Sawyer who worked his regular assigned position as Mail Clerk/Messenger, 1:00 P.M. to

9:30 P.M., was instructed to assist other Express employees as needed, as well as perform his own duties. The vacant position was not filled. On June 1, 2001, a claim was filed alleging that Mail and Baggage Clerk Phillips was available to cover the vacancy at issue. The claim was denied at all levels and was progressed to the Board for final resolution.

The Board reviewed the record and has concluded that an equitable resolution of this claim would be to pay the Claimant a call for the missed work opportunity.

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 18th day of May 2004.