

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37033  
Docket No. CL-37754  
04-3-03-3-66

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-12964)  
that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement on May 19, 2001, when it failed to assign Claimant, Lead Ticket-Seller - S. Martin, Symbol No. LTC-1, hours 730A to 4 PM located at NY Penn Station, NY, NY, to an overtime Lead Ticket Seller assignment on Sat. May 19, 2001, hours 5 AM to 130 PM. Claimant S. Martin now be allowed eight (8) hours at the punitive rate of pay as a Ticket Seller and receive four (4) dollars at the pro-rata rate that a Lead Ticket Clerk would receive while in the performance of the duties as a Lead Seller on account of this violation.

On Jan. 19, 2000, the Carrier responded to a claim filed by the Organization that "the Carrier would cease the practice" of allowing "Lead Ticket Clerks" filling supervisor's positions on a temporary basis. Since such response, the Carrier has since blanked any supervisor position that has become vacant on any occasion, then called out an Extra Lead Clerk position in seniority order (at overtime) under the provisions of Appendix E(Article 5A/6A).

The Rules that created or authorized "Partially Exempt Positions" contained in Rule 1 (Scope) Rules: 1-B-1(Promotion), Rule 2-A-1 (Bulletin-Assignment), and Rule 3-C-1 (Reducing and Increasing Forces) do not apply to these positions. However, the Overtime Rule

does apply to such positions, was not applied to in this case, and as such the Carrier is aware that between both parties one (1) day vacancies is not considered a temporary assignment.

The Carrier called and worked Junior "Lead Ticket Clerk" M. James for overtime for the vacancy with the hours of 5 AM to 130 PM on Friday, May 18, 2001, but failed to make a first/second call to Claimant, S. Martin (on either day) as the Carrier's records indicate for the 5 AM vacancy. The Carrier did ask her for the (1 PM vacancy) but she selected to say no.

The Carriers' Window Assignment/Manpower sheet will show Junior Clerk-James as working a "CRD" overtime and as a Lead Clerk in its particular column.

Claimant S. Martin would have accepted the call and worked the vacancy.

The Carrier is in violation but not limited to:

Appendix E (Article 3C)  
Appendix E (Articles - 5A/6A)  
and other Rules . . . .

Claimant S. Martin was the senior, available and qualified Lead Ticket Clerk and should have been called and worked to perform such work.

Claimant S. Martin now be allowed eight (8) hours at the punitive rate of pay as a Lead Ticket Clerk, and receive the add'l four (4) dollars at the pro rata rate that Lead Ticket Clerks would receive while in the performance of these duties on account of this violation.

This claim has been presented in accordance with Rule 7-B-1 of the Off-Corridor Clerks Rules Agreement, Rule 25 and should be allowed and accepted as presented.

As attached:

Carriers (Manpower/Window Assignment Sheet)  
Carriers Call Out Sheet  
Jan. 19, 2000, response letter from Carrier to Organization's Local  
Representative  
(Letter of Receivment of claim from Carrier)"

**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.

It appears from the record of this case that the Carrier used the wrong Lead Ticket Clerk junior to the Claimant in an overtime assignment from 5:00 A.M. to 1:30 P.M. on Saturday, May 19, 2001. Lead Ticket Seller Martin should have been called. There is no indication in the record that the Claimant was called for the 5:00 A.M. to 1:30 P.M. vacancy. Consequently, the Board is compelled to sustain the claim. The claim will be sustained for eight hours at the straight-time rate plus the \$4.00 requested.

**AWARD**

Claim sustained in accordance with the Findings.

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**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.**