

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37076
Docket No. CL-37800
04-3-03-3-149

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-12974)
that:

The Carrier violated the Amtrak TCU Northeast Corridor Clerks Rules Agreement when on October 20, 2001, it failed to remove the status of Partial Exempt for position of Lead Ticket Seller located at NY Penn Station Ticket Office, hours 7:30 a.m. to 4:00 p.m., as advertised in Bulletin Job Opportunity Notice Number (NYP-PAD-016-01) dated July 18, 2001, and had expired July 22, 2001.

Claimant S. Goode now remain on the said position and that Lead Ticket Seller position as advertised (NYP-PAD-016-01) now be bid/bump.

On July 10, 2001, at the instructions of the Carrier's Manager of the NY Penn Station Ticket Office (HV Rogers) Chief Entitlement Clerk L. Katz presented to former incumbent of the said position, S. Martin, presented a release from hold letter indicating that she would be released from her current position of Lead Ticket Seller effective Friday July 20, 2001, at the close of business.

In the weeks Bulletins/Awards dated July 18, 2001, S. Martin's position was advertised with an expiration date of July 22, 2001, with advertisement job opportunity number (NYP-PAD-016-01).

The said position has been vacant for ninety days and beyond and the Carrier did not offer the position at anytime to an Extra List Employee in fear of being in violation of Appendix E (Articles) 1b, 4, as well as Rule 5-C-1.

This claim is not being filed out of the 60-day limit, and as such this occurrence is the triggering event.

On the 90th day the Carrier continued to not fill the position as is evidenced on its assignment sheet dated October 19, 2001, and even further dates of Monday October 22, 2001, the position has continued to be blank.

The Carrier is in violation of Appendix A-2: (Partially Excepted Positions in NEC Depts.) From the Carrier's printout as of December 6, 2000, page 63 and from Mediation Agreement dated September 1994 Article III-Rule Modification Section (3)(A) which reads in part:

'When a partially excepted position is vacant for more than 90 days, the Partially Excepted status will be automatically eliminated.'

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

Additionally, Agreement was violated when Carrier failed to respond to the grievance as required by Rule 25 - Grievance."

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 the record, including the Organization's contention that the Carrier did not respond to this claim at the second level of handling in a timely manner.

The Board concluded from its review that the Organization did not present sufficient proof that the position in question was vacant for 90 days or that the Carrier did not respond to the claim at the second level in a timely manner. Because the Organization has not carried its required burden of proof, the claim must be denied.

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 21st day of July 2004.