

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37077
Docket No. CL-37821
04-3-03-3-154**

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-12976) that:

- I. The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement particularly work Rule 5-E-1, Rule 4-A-4, Rule 1 and other rules, when the Carrier changed the hours of a Partially Exempt Position, located at the Crew Base NY, NY, on August 8, 2001, and then failed to provide the said position with a relief that is identified as a Partially Excepted Position.

Positions identified as Partially Excepted Positions are exempt from the use of an Extra List Employee to fill such vacancies of such positions unless an Agreement has been made between the Carrier and the Organization's Division Chairman in the manner in which the Extra List would be worked. Where employees would be used and the number of Extra Lists and the number of the extra employees.

Non-Partially Excepted Positions are posted at all employee locations within the normal Bulletins/Awards. When a position becomes available those interested can submit an Application to the Carrier's Human Resources Office, then an interview would be conducted. The Carrier would then have the option to choose the best candidate from the pool of candidates. The particular candidate after being chose would receive the status of a Partial Exempt Status on the Carrier's Roster of Seniority. Relief for the said Position would then be covered by other Partially Exempt Positions within the same category.

Claimant Ms. Margaret Banks now be allowed eight (8) hours punitive pay, based on the Pro-rata daily rate of \$18.46 for each day of week of this violation that she is required to cover this position, and then Bulletin a relief for the said position.

The Organization requested in advance from the Carrier's Department Manager, D. Johnson (see attached), to bulletin the said position with a relief in order to avoid any unnecessary claims that may result if/and when the position is bulletined without a relief position. The Carrier has chosen not to comply with the request.

This claim will be retroactive to the date of the change or sixty (60) days whichever applies, and should include any future incumbents of the involved position.

This claim is presented in accordance with Rule 7-B-1 of the NEC Agreement in conjunction with Rule 25 of the Off Corridor Clerks Rules Agreement and should be allowed as presented.

Additionally, agreement was violated when Carrier failed to respond to the grievance as required by Rule 25.

II. Claim of the System Committee of the TCU (NEC-2183) that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement particularly work Rule 5-E-1, Rule 4-A-4, Rule 1 and other Rules, when the Carrier changed the hours of a Partial Exempt Position, located at the Crew Base, NY, NY on August 8, 2001, and then failed to provide the said position with a relief that is identified as a Partially Excepted Position.

Positions identified as Partial Excepted Positions are exempt from the use an Extra List Employee to fill such vacancies of such position unless an Agreement has been made between the Carrier and the Organization's Division Chairman in the manner in which the Extra List would be worked. Where extra employees

would be used and the number of Extra Lists, and the number of the extra employees.

Non-Partially Excepted Positions are posted at all employee locations within the normal Bulletins/Awards. When a position becomes available those interested can submit an Application to the Carrier's Human Resources Office then an interview would then be conducted. The Carrier would then have the option to choose the best candidate from the pool of candidates. The particular candidate after being chosen would receive the status of a Partial Exempt Status on the Carrier's Roster of Seniority. Relief for the said position would then be covered by other Partial Exempt Positions within the same category.

Claimant D. Brooks now be allowed eight (8) hours punitive pay, based on the pro-rata daily rate of \$18.46 for each day of week of this violation that she is required to cover this position and then Bulletin a relief for the said position.

The Organization requested in advance from the Carrier's Department Manager, D. Johnson (see attached copy) to bulletin the said position with a relief in order to avoid any unnecessary claims that may result if/when the position is bulletined without a relief position. The Carrier has chosen not to comply with the request.

This claim will be retroactive to the date of the change or sixty (60) days whichever applies and should include any future increases to the rate and any future incumbents of the involved position.

This claim is presented in accordance with Rule 7-B-1 of the NEC Agreement in conjunction with Rule 25, of the Off-Corridor Clerk Rules Agreement and should be allowed as presented.

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

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 of this case in detail. We have given special attention to the Organization's contention regarding the Carrier's failure to respond to the claim in a timely manner at both the first and second level of handling. Following the Board's review of the total record, it is concluded that the Carrier has not met its obligation under Rule 25, Grievance, to respond to the Organization's claims in a timely manner. Based on the language of Rule 25 and numerous prior Awards of the Board that have addressed the timeliness of the Carrier's response to claims, the Board is compelled to sustain this case as presented for the days the Agreement was violated.

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 21st day of July 2004.

SERIAL NO. 405

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 37077

DOCKET NO. CL-37821

NAME OF ORGANIZATION: (Transportation Communications International Union

NAME OF CARRIER: (National Railroad Passenger Corporation (Amtrak)

The Parties requested that the Board render an Interpretation of the above Award. The Board reviewed the materials submitted by the parties and has concluded that the Carrier complied with the Award. The Award directed payment as presented for each day the Agreement was violated. In the case of Claimant Banks that would be every Saturday worked from the date of the claim until the violation ceased. Claimant Brooks would be paid for every Sunday worked from the date of the claim until the violation ceased. It is clear from the print out of payment, presented by the Carrier in its Interpretation Submission, that Claimant Banks was paid. The Carrier is directed to review the Claimants' work and payroll records with the General Chairman, if he so requests, to verify such payment was made.

Referee Rodney E. Dennis who sat with the Division as a neutral member when Award 37077 was adopted, also participated with the Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 7th day of December 2006.