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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37078
Docket No. CL-37852
04-3-03-3-165

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-12980) that:

Carrier violated the Amtrak NEC Clerks Rules Agreement, particularly work Rule 5-E-1 (40 Hour Work Week) Rule 4-A-4 and other rules, when the Carrier advertised Lead Red Cap, Symbol No. RC-15, located at New York Penn Station Customer Services Department on Bulletin No. 29 dated July 18, 2001, with rest days Wednesday and Thursday, and had no relief position to cover this position's relief days. The Carrier awarded the position in the following week's bulletin dated July 25, 2001.

Claimant T.C. Henry now be allowed eight hours punitive pay, based on the pro-rata daily rate of \$15.96 plus 50 cents per hour each day of week of this violation that he is required to cover this position.

The Organization requested in advance from the Carrier's Department Manager, J. Roseen, on June 27, 2001 and Labor Relations Manager, New York, Mr. DePhillips on June 28, 2001, and by a Certified Letter No. 7000167000130082887 (see) attached copies that in order to avoid unnecessary claims it was requested that, if and when, said position is bulletined, the position be bulletined with

a relief or be bulletined with relief days of Saturday and Sunday.
The Carrier has chosen not to comply with the request.

This claim will be retroactive to the date of the award or sixty 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 Clerks Rules Agreement and should be allowed as presented.

Additionally, the 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 in detail. As a result of that review, the Board concluded that the claim must be denied. The Organization failed to present persuasive evidence that the position at issue was required by Rule or Agreement to have Saturday and Sunday as rest days. Neither has it presented sufficient evidence to counter the Carrier's statement that it did respond in a timely manner to the instant claim at the second level.

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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.