

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37081
Docket No. CL-37976
04-3-03-3-396

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-13001)
that:

1. The Carrier violated the rules of the parties' Agreement dated July 27, 1976, effective September 1, 1976, particularly Rule 1 Scope, Rule 4, Rule 5-C-1 (Appendix E), among other applicable rules and agreements, when on October 24, 2001 it used employee J. Wiolland, an extra list employee assigned to the Mail, Baggage and Express Department located at Penn Station, New York City, New York, outside of the territory the involved extra list covers.
2. The Carrier used employee Wiolland on partial excepted position of Lead Baggage man, Job Symbol No. LB-5, hours of assignment 7:30 a.m. to 4:00 p.m., which the involved extra list makes no provisions for extra list employees to cover.
3. The Carrier shall be required to compensate employee Paul Boehme, the senior, qualified, available employee eight hours at time and half rate, in addition to \$4.00 account of being by-passed for the Lead Baggage men position on October 24, 2001.

4. This claim has been presented and progressed in accordance with the provisions of Rule 7-B-1 of the Agreement and should be allowed."

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 Claimant was assigned as a Baggage man at Penn Station when the instant claim arose. On October 24, 2001, the Carrier allowed a Guaranteed Extra Board employee, J. Wiolland, to work a Partially Excepted Lead Baggage man vacancy at the straight-time rate in the New York Mail Baggage Express Office. On December 6, 2001, the Organization filed the instant claim on behalf of the Claimant, the senior qualified available employee. It requested eight hours pay at the punitive rate plus \$4.00 account being by-passed for the Lead Baggage man position on October 24, 2001. The claim was denied at all levels of handling and placed before the Board for final resolution.

The Board reviewed the parties' Submissions in detail. As a result of that review, we find no basis for the Organization's position on the merits or on the de minimus procedural violation it claimed the Carrier committed. The Board addressed the merits of this issue in Third Division Award 36026. We see no basis for not allowing that Award to stand in this case. As to the procedural flaw in the Carrier's handling of this case, the Board finds no basis to conclude it was of significance in any manner.

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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.