

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37131
Docket No. CL-38076
04-3-03-3-486**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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-38076)
that:

The following claim is hereby presented on behalf of Claimant William Leak, Jr.

- (A) Carrier violated the Amtrak Clerk's Rules Agreement; particularly the Agreement dated September 2, 1994, Section 3 - Partially Excepted Positions, paragraph b; when on February 5, 2002 it failed to post a PE position held by a person junior to the Claimant. On that date the Claimant was unable to hold a full time regular position and went unassigned. The Carrier put off posting any such position until March 20, 2002; which was thirty working days and a holiday.
- (B) Claimant now be allowed payment for 31 days at 100% rate of job #336469 Payroll Clerk which belongs to Ms. J. Weaver; who was the lowest seniority number; on account of this violation.
- (C) Claimant was available and willing to work during this period but was prevented from doing so by the Carrier's failure to post the position in a timely manner. Claimant has worked the above mentioned position in the past for over a year.

(D) This claim is presented in accordance with Rule 25 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 furloughed on February 5, 2002. At that time, a junior employee held a Partially Excepted (PAD) position. The Organization contends that the Carrier violated the Agreement when it failed to repost the PAD position until March 20, 2002.

Section 3(b) of the September 2, 1994 Agreement provides, in relevant part::

“... If an employee on a full time regular position becomes unable to hold a full time regular position and is senior to an employee holding a partially excepted or PAD position, the partially excepted or PAD position will be reposted. When the position is reposted, it will be filled by an employee who would not otherwise be furloughed or the position may be abolished. The incumbent may be held on the position without penalty until the position is filled.”

During handling on the property, the Carrier maintained that at the time of his furlough, there were several junior employees in full time regular positions who the Claimant could have displaced. Therefore, the Claimant was not unable to hold

a full time regular position until subsequent furloughs left the Claimant with no regular position into which he could exercise displace. The Organization offered no evidence that the Claimant was unable to hold a full time regular position at the time of he was furloughed. Because the Organization has the burden of proof, the claim must be denied for lack of proof.

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 25th day of August 2004.