

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37804
Docket No. CL-37995
06-3-03-3-404**

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-13003)
that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Amtrak on January 30, 2002, when it failed to call and work the senior, available qualified employee for the position of ticket seller hours 5:30 a.m. to 2:00 p.m. at Newark, NJ, Penn Station Ticket Office.

Claimant Charles John Jackson now be allowed eight hours at the punitive rate of pay as a ticket seller on account of this violation.

The Carrier is in violation of Appendix E - Article #A, Article 7 and other rules.

On January 30, 2002, the Carrier called and worked Customer Services Employee, N. Tatum-Sealy for position of ticket seller at 5:00 a.m. and allowed her to work the shift until 10:00 a.m. at which time she then assumed her regular shift in the Customer Services Office at Newark at 10:00 a.m. until 6:30 p.m. The Carrier's supervisor admitted to Claimant who also is the duly accredited representative for the clerks craft (the author) of this claim that he had not contacted Jackson, and that there was not a call out sheet made up to reflect that claimant was given a first/second call for his

interest in the vacancy. The Carrier had no extra list to call from, called available qualified candidates for their interest, and it was then that the Carrier was at the hogs list (those) employees (Appendix E - Article 7) would have made it known (by written notification) that they have an interest in working overtime at that location.

Such letter is on file with the Carrier Manager at the Newark New Jersey Manager's office. Claimant would have accepted the call, received the punitive rate of pay as did Tatum-Sealey, and would have been available for the entire shift. Claimant was the senior, available, and is qualified.

This claim has been presented in accordance with the Amtrak-NEC Agreement Rule 7-B-1 and in accordance with the Off-Corridor Clerks rules Agreement, Rule 25, and should be allowed and accepted as presented.

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

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 instant claim was filed on February 7, 2002, alleging that the Claimant, as the senior qualified employee, should have been called to work a 5:30 A.M. - 2:00 P.M. ticket seller vacancy at the Newark, New Jersey, ticket office, and that the Carrier improperly used a junior employee to cover the vacancy from 5:00 A.M. - 10:00 A.M., at which time the junior employee assumed her regular duties at the Newark Customer Services Office. The Customer Services Manager denied the claim on April 1, 2002. The Organization appealed the denial on April 5, 2002.

Conference was held on May 16, 2002, with the Division Manager Labor Relations, the Division Chairman who was also the Claimant, and the Vice General Chairman. On June 20, 2002, the Division Manager Labor Relations sent a letter denying the claim to the Vice General Chairman. On July 15, 2002, the Vice General Chairman wrote the Division Manager Labor Relations protesting the sending of the appeal denials to him instead of the Division Chairman and returned the denials to the Division Manager Labor Relations.

The Organization contends that because the Division Manager Labor Relations did not send the appeal denial to the Division Chairman, the appropriate duly accredited representative, the Carrier failed to deny the claim within the 60-day period required by Rule 25 and the claim must be sustained as presented. We faced the identical procedural argument in Third Division Award 37127. We rejected the argument, reasoning, in part:

“Assuming that the Division Manager should have directed the appeals to the Division Chairman, principles of good faith and fair dealing would require the Vice General Chairman to forward the denials to the Division Chairman or promptly notify the Division Manager Labor Relations that the denials had been misdirected and should be directed to the appropriate representative. Instead, the Vice General Chairman waited until the time limits had expired and then returned the denials to the Division Manager Labor Relations. Such game playing should not be rewarded by sustaining an otherwise meritless claim.”

We adhere to our holding in Award 37127, reject the Organization's procedural argument and turn to the merits of the claim. In his denial, the Division Manager Labor Relations explained:

"Claimant, at the time of this dispute, was based in the Penn Station - New York - ticket office, which does have an extra board protecting any (N.Y.) vacancy. The vacancy, herein, occurred at the Newark Office which, similarly, has an extra board protecting vacancies in that office. The employee who worked 5 hours on January 30, 2002 was a Newark based/headquartered employee. Article 7 of appendix E would apply to claimant being eligible to work at Newark only *after* the Newark headquartered employees 'declined' their work."

Appendix E provides, in relevant part:

ARTICLE 5

(A) When it is necessary to perform work of a five-day assignment on the rest days of that assignment and the work is basically the same as that performed during the workweek and during the same relative hours and no qualified extra board employees are available at the straight time rate, the incumbent of the five-day assignment will be offered the overtime first. . . . Should the incumbent refuse the overtime it will then be offered to the senior, available, qualified extra or regular employee in the territory whose position is protected by the particular extra board involved.

ARTICLE 6

(A) Regular and extra work assignments not covered by Article (5) above will be offered to the senior, qualified, available extra or regular employee in the territory whose position is under the jurisdiction of the extra board involved.

ARTICLE 7

(A) In the event the vacancy cannot be filled under Articles (5) and (6) above, the overtime will then be offered to the senior, qualified, available regular or extra clerk from those areas covered in Article (1) of this Agreement who have made their written application for same."

A review of the above quoted Rules fully substantiates the Carrier's denial. Under Appendix E, the Claimant was entitled to be called for the work only in the event the position could not be filled with a regular or extra board employee in the jurisdiction of the extra board involved, i.e., at Newark. The Carrier complied with the Agreement by calling the senior, qualified, available employee at Newark. Calling the employee in for five hours of overtime prior to her regular starting time, rather than for an entire eight hour overtime shift, was proper. See Third Division Award 36192.

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 June 2006.