

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37805
Docket No. CL-38086
06-3-03-3-507

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-13018)
that:

- (A) The Carrier violated the National Railroad Passenger Corporation (Amtrak) Clerks' Rules Agreement, particularly Rule 14 and other rules, as amended by the September 2, 1994 Agreement, as well as the May 18, 1999 Extra List Agreement and the National Vacation Agreement when it failed to properly call and work Claimant Mike Campbell on June 30, July 1st, and July 21, 2002 for 7:30 AM Ticket Clerk Vacancy at the Buffalo-Depew, NY Station.
- (B) Claimant Mike Campbell now be allowed eight (8) hours pay at the appropriate punitive rate for June 30, July 1st, and July 21st, 2002. Claimant is senior, is qualified, was available and should have been called and worked in accordance with the Rules Agreement.
- (C) Claimant was available and should have been allowed to work in accordance with the Rules Agreement.
- (D) This claim has been 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.

On the dates in question, the Ticket Clerk/Baggageperson regularly scheduled for the 7:30 A.M. to 4:00 P.M. shift was on vacation or on a personal day. The Carrier blanked her position. However, Train 48 arrived late on each of those days and the Carrier held over third shift employees who were junior to the Claimant to work the late train. The Organization maintains that, in so doing, the Carrier violated the Agreement. In the Organization's view, the Carrier did not properly blank the 7:30 A.M. - 4:00 P.M. position because it held over third shift employees to perform work of that position. The Organization relies on Third Division Award 31951.

We reviewed Award 31951 carefully. We find that it does not control the instant case. In Award 31951, the Carrier diverted a Ticket Clerk during his regular shift to help load mail on a train that was supposed to arrive before the Ticket Clerk's shift began, but which arrived several hours late. In so doing, the Board held that the Carrier violated Rule 14(l) which provides, "Employees shall not be required to suspend work during regular hours to absorb overtime." In the instant case, the Carrier did not divert an employee during his regular shift to perform the work of another position to avoid overtime. Rather, the Carrier held employees beyond the end of their regular shifts to service a delayed train and paid them at the overtime rate. The Board has held that the Carrier may do so. See Third Division Award 36027.

The Organization distinguishes Award 36027, arguing that it did not involve the holding over of employees to perform the duties of a blanked position. We are not persuaded. The record does not reflect that the third shift employees were held over because the first shift position was blanked. Rather, they were held over because the train that was scheduled to arrive during their shifts arrived late.

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.