

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37806
Docket No. CL-38121
06-3-03-3-508**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Transportation Communication International Union
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12003) that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement on Monday, June 17, 2002, when it called and worked junior employee S. Martin-Jordon for position of Ticket Seller, hours 9 a.m. to 7 p.m. at Newark Penn Station a position that does not have.

An established agreement between the Organization and the Carrier in establishing Ten Hour Work days, at this work location.

In calling junior extra employee, EX-301 for a position that does not exist, the Carrier failed to call and work Claimant April Paul for the position at the punitive rate of pay, who is senior, was on her rest day, and is qualified to perform the work.

Claimant Paul now be allowed eight (8) hours at the punitive rate of pay on account of this violation.

The Carrier is in violation of Rule/s and Appendixes: Rule 4-A-4 (Work on Rest Days), Rule 2-A-1 (Bulletining and Awarding), Appendix E- Articles 3b, 1-1/b, 2a/b, 5a, 6a. Appendix H-Article IV-paragraph(d), Rule 5-C-1 (Extra Boards) and other rules.

The Carrier and the Organization have no written agreement establishing Ten-Hour Workdays to be based out of Newark Penn Station. The only two ticket seller positions established that the Carrier and the Organization have made provisions and agreed to have ten hour days and be based at the Airport location the (Port Authority).

There are no regularly assigned positions at Newark Penn Station (the) location of the violation. When the Carrier assigned S. Martin-Jordan for a position of ten hour days the Carrier was in violation of the call period for the Extra List which is 5 a.m. to 7 p.m., 1 p.m. to 3 p.m. and 9 p.m. to 11 p.m. The Extra List does not have regularly assigned work and days off. When Carrier assigned S. Martin-Jordan to the position the Carrier also assigned her for the next day, Tuesday same shift then assigned her three days off (Wed., Thurs. And Fri.). In accordance with Article E, Article 12 - paragraph (f) the work week for the Extra Board begins on Mondays at 12:01 and allows the Extra Board to have seven days within a week to make his or her 40 hour guarantee. If within that seven day the employee has not worked the prescribed 40 hours - provisions of the Extra agreement allow for the employee to have those hours made up to match is/her guarantee.

In assigning rest days, in advance and working the ten hour work day the Carrier is trying to open the door for regular assigned positions to be eventually abolished (Appendix E - Article 13) and avoiding the establishment of new positions to be bulletined (Rule 2-A-1).

Claimant April Paul was on her rest day, is qualified to perform the work, and would have accepted and received eight (8) hours at the punitive rate of pay for work performed. The Carrier failed to offer a first/second call to claimant. The Claimant's representative requested from the Carrier the call out sheets for overtime. The Carrier's Manager Kato provided to Claimant's local representative

and on a conference with Vice General Oathout of TCU that no such call sheets existed and that the Organization should file a claim for all of the dates. S. Martin-Jordon would be working the whole week because she was not going to change her mind in order for unnecessary claims/grievances to be filed.

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

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 alleges that on June 17, 2002, the Carrier worked a Guaranteed Extra Board employee for ten hours at Newark - Penn Station in violation of the Agreement which provides that the regular workweek consists of five eight hour days. The Organization maintains that the Carrier may only require employees to work ten hour days at Newark Airport where the parties have a Special Agreement to that effect. The Carrier responds that it has the right under the Agreement to work an Extra Board employee for ten hours where necessary to meet the employee's 40 hour weekly guarantee.

We need not determine which party's interpretation of the Agreement is accurate. The record reveals that there is a disputed issue of fact. During handling on the property, the Organization based its position that the Extra Board employee worked ten hours on the date in question on the work schedule. The Carrier, pointing to the History of Paid Labor, maintained that the Extra Board employee worked only eight hours on the date in question. Notably absent was any statement from the employee attesting to the hours that she actually worked.

As an appellate body, we are unable to resolve such disputed issues of fact. The Organization bears the burden of proof on the question of how many hours the Extra Board employee worked. On the record presented, the claim must fail 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 21st day of June 2006.