

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38078
Docket No. CL-39106
07-3-05-3-455

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 TCU (NEC-2515) in behalf of Claimant Neil Roman.

The Carrier violated the Amtrak/TCU (NEC) Clerks Rules Agreement on Sunday November 9, 2003, particularly Rules: 1-B-i, 4-A-4, 9-A-1, Corporate Mediation Rule 2 Appendix E - Articles 3-C, 5(A), 15(A), Appendix H-Articles I, -A/B, IVA/B, IX, (and other rules) when the Carrier called and assigned (improperly) employee, P. Roberson, to vacant usher position Symbol No. U-23, at 3:30 pm at NY Penn Station, Customer Services, instead of filling the vacancy by calling then assigning the vacancy to the incumbent of the position.

Claimant, N. Roman, now be allowed eight (8), hours at the punitive rate of pay based upon the daily pro-rata, rate of an usher on account of this violation on November 9, 2003.”

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 Sunday, November 9, 2003, the Claimant was the incumbent on Usher position U-39, regularly scheduled to work 3:30 P.M. - 12:00 midnight, with rest days of Sunday and Monday. A vacancy arose on Usher position U-23, regularly scheduled to work Thursday through Sunday 3:30 P.M. - 12:00 midnight, and Monday, 10:45 A.M. - 7:15 A.M. The Carrier filled the vacancy by calling the senior available employee. The Organization contends that the Carrier should have first offered the vacancy to the Claimant as the incumbent of the position who was on his regular rest day. The Claimant worked the same shift as U-23 on Thursday through Saturday and on Monday, U-23 did not work the 3:30 P.M. - 12:00 midnight shift that the Claimant worked on other than his rest days. Thus, the record fails to establish that U-23 was the Claimant's relief on his rest days or that the Claimant was the incumbent entitled to be called to fill the vacancy. Accordingly, the claim must be denied.

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 February 2007.