

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 38083
Docket No. CL-39139
07-3-05-3-595**

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-2284) in behalf of Claimant William Fortune:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement on April 27, 2002, when it diverted employee, K. Williams from her regularly assigned position in the Newark Ticket Office Accounting Office, Job Symbol No. TC/TAC-6 hours 8am to 4:30pm to sell tickets at the Ticket Window. In doing so, the Carrier failed to follow the Agreement in filling known vacancies in accordance with the Overtime rule, Appendix E Article 3c, 5a, 6, 7 - Claimant Wm Fortune who was on his rest day, senior and is qualified to sell tickets that day. Diverted employee, Williams sold Tickets that day for eight (8) hours.

Claimant Wm Fortune now be allowed eight hours (8) at the punitive rate of pay on Account of this violation.

The Carrier is in violation of Rule 1 - Scope (paragraph h), Rule 4-A-4 (wrk. On rest days) Appendix E - Article 3c, 5a, 6, 7, Appendix H - Article IV-(d), Rule 2-A-1(Bulleting/Awarding) and other rules.

On 4/27/02 the Carriers Supervision ordered the Accounting clerk assigned to perform Accounting Work to sell tickets - Kim Williams Ticket/Accounting Clerk position was advertised for her to sell

tickets on specified days of the week and that on Saturdays and Sundays she would work in the Accounting office to go over the regularly assigned Ticket Seller work, balance the office work, and then send the Accounting Office work to the Main Accounting office located in Philadelphia, PA. She could not perform this work this day due to being diverted to sell tickets. In diverting Williams the Carrier circumvented the Overtime rule of not calling the senior, available, qualified employee from which the Extra Board would have jurisdiction of vacancies, Territory to cover vacancies, that exist from this Work location.

The regularly assigned position (Job Symbol No. TC/TAC-1) in the Accounting Office Description of Duties states, "Travel and Train Information will be dismissed at Ticket windows when retired." Williams Description of Duties also states the same and the Preponderance of the position on Saturdays and Sundays is: Accounting Work.

When claimants local representative met with the Carriers manager to resolve claim without having to write a claim and that claimants representative pointed out the description did not include selling tickets - the Carrier representative said yes, it does - it is exactly like the positions at New York Penn Station Accounting Office Clerks Job descriptions. This is Untrue. Included is a copy of one of the Descriptions of a NY Penn Station, Symbol TC/TAC-4 which states (in the Carriers) unauthorized position at this location - which reads in part "Employees will personally wait on customers and sell tickets when the work load demands.

The Carrier clearly had a known vacancy that day and to circumvent the established way of calling out vacancies at overtime - deliberately did not call out claimant to avoid paying out Overtime for the vacancy.

Claimant Wm Fortune would have accepted the call, worked the vacancy, and would have been paid at the punitive rate of pay of

eight (8) hours for work performed. He was not given a first/second call for his interest in the work. Claimants representative did request from the Carrier a call-out sheet for the vacancy - no call out sheet was made out according to the Carrier that day - because no overtime was filed for this position.

This claim has been presented in accordance with Rule 7-b-1 of the NEC Agreement in Accordance with Rule 25 of the Off Corridor Clerks Rules Agreement and should be allowed 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 is governed by our decision in Third Division Award 38076, Claim II. For the reasons stated therein, the claim is denied.

AWARD

Claim denied.

Form 1
Page 4

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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.