

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 38121
Docket No. CL-38475
06-3-04-3-496**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-13059) that:

- (a) The Carrier violated the TCU/CSXT North Rules Agreement effective June 1, 1999, particularly, Rules 5, 18, 22, 30, 24, 40, 60, 64 and other Rules, when commencing on or about June 2, 2003, they worked junior employee M. Meilak outside her assigned hours (2300-0700) and failed to instead call the Claimant, who is senior and qualified.**
- (b) Clerk Meilak was assigned a 2300 – 700 Clerk/Messenger assignment effective June 2, 2003, at Selkirk Yard, Selkirk, NY.**
- (c) Carrier should now allow the senior, available Claimant eight (8) hours overtime pay, based at the rate of his/her protected rate or position rate, whichever is greater, commencing on June 2, 2003 and continuing through June 7, 2003 until the violation was corrected.**
- (d) This claim is presented in accordance with Rule 45 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.

This is a companion claim to the claim decided in Third Division Award 38120. Therefore, the background of this matter will not be repeated here. The Carrier argued persuasively that the Claimant in Award 38120 (M. Meilak) was in the process of qualifying on her Clerk/Messenger position. Thus, that employee's temporary assignment to training on the first shift did not leave a vacancy on the third shift that would have to be filled by calling the "senior available Claimant." Nothing in this record suggests that there was a vacancy to be filled.

Accordingly, there is no support for sustaining the claim.

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 15th day of March 2007.