

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 38135  
Docket No. CL-39108  
07-3-05-3-586

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-2486) that:

The Carrier violated the Amtrak-TCU (NEC) Clerks Rules Agreement particularly but not limited to Rule 1(h), 1-B-1, 2-A-1(a, c), 4-A(1), 4-C-1, 7-B-1, 9-A-1, Appendix E-Articles: 3c, 5a, Appendix H-Articles Ia, b, IV-a, b, IX, Corporate Mediation Rule 25 and other rules when on Friday October 31, 2003 and Saturday November 1, 2003 the Carrier made an Exception to the current Rules Agreement without a written (concurrence) from the TCU Organization's General Chairman A. P. Santoro, and the Carrier's Director of Labor Relations when filling all vacancies, then improperly re-assigned a regular assigned employee from the preponderance of his duties to fill known vacant position of Customer Services Representative (Acela Seating Area Attendant), symbol no. CSR-7, starting at 5 a.m. and 6 a.m. respectively located in the Acela Seating Area of New York Penn Station in the Customer Services Department, New York City, NY, instead of properly filling the vacancy by calling then assigning the vacancy to the incumbent of the said position at the punitive rate of pay.

Claimant, G. Isreal, now be allowed eight (8) hours at the punitive rate of pay based upon the daily rate as a Customer Services Representative of \$138.72 on account of the violation of November 1, 2003.

Claimant G. Isreal, now be allowed eight (8) hours at the punitive rate of pay based upon the Daily rate of A Customer Service Representative of \$138.72 on account of this violation on October 31, 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.

The basic facts underlying the claim in the instant case are not in dispute. On October 31 and November 1, 2003, position CSR-7 at New York, Penn Station, was vacant. The Carrier blanked the vacancy but had a Seating Area Attendant, who held position CSR-9, perform the duties of position CSR-7. The Organization contends that, in so doing, the Carrier violated Rule 4-C-1, which provides:

"Employees will not be required to suspend work during regular hours to absorb overtime."

The Organization argues that the Carrier did not really blank the position, but rather had the incumbent of CSR-9 suspend work and perform the duties of the purportedly blanked position to avoid calling the Claimant on overtime. We note that positions CSR-9 and CSR-7 have identical schedules and identical rates of pay. The "Description of Duties" for each position in their respective bulletins substantially overlap. The only duty mentioned in the CSR-7 bulletin not mentioned in the CSR-9 bulletin is, "check tickets of customers entering the seating

area.” It is unclear how significant even this difference is, because the bulletin for CSR-9 includes “perform other duties as assigned.”

The Organization, as the moving party, has the burden of proof. Specifically, the Organization must prove that the employee occupying position CSR-9 was “required to suspend work,” i.e., was required to perform duties that fell outside the duties of his position. The record developed on the property is sparse. It does not reflect what specific tasks the employee occupying position CSR-9 performed on the dates in question. The Organization emphasizes that the position that was vacant was at the Acela seating area, whereas the incumbent of CSR-9 usually was stationed at the general seating area. The Organization overstates the significance of the physical locations. Both positions’ bulletins specify the location as “Customer Service, Penn Station, New York.” They do not specify a location of a particular seating area within Penn Station. We conclude that because the Organization failed to carry its burden of proof, 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 23rd day of April 2007.**