

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38235
Docket No. CL-39342
07-3-06-3-192

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 General Committee of the Organization that:

1. The Carrier violated Rules 6, 7, 14, Article VI of the September 6, 1991 Mediation Agreement, and other related rules of the agreement when it diverted Claimant on May 4, 2003.
2. The Carrier will now be required to compensate the Claimant eight (8) hours at the overtime rate of time and one half for the above mentioned dates.”

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 Claimant was a Ticket Clerk at Chicago Union Station, regularly assigned to work a shift that began at 7:30 A.M. and ended at 4:00 P.M. On May 4,

2003, the Claimant worked a PIDS position that began at 6:00 A.M. The Organization contends that the Carrier violated the Agreement by diverting the Claimant to the PIDS position instead of filling the vacancy in accordance with Rule 7 of the Agreement. Relying on Public Law Board No. 5202, Awards 3 and 4, the Organization contends that the Carrier improperly diverted the Claimant from her regular assignment to absorb overtime.

The Carrier responds that it did not divert the Claimant to the 6:00 A.M. PIDS assignment. Rather, the Carrier maintains that the Claimant agreed to work an overtime assignment from 3:00 P.M. to 11:00 P.M. in the PIDS office while a Reservations and Information Agent whose regular assignment was 2:30 P.M. to 11:00 P.M. agreed to work the 6:00 A.M. assignment on overtime. According to the Carrier, the Claimant and the R & I Agent switched shifts without management knowledge or approval.

This case thus turns on the factual issue: Did the Carrier divert the Claimant from her regularly assigned position to absorb overtime or did the Claimant take it upon herself to switch overtime assignments with the R & I Agent? Of course, as the moving party, the Organization bears the burden of proof on this disputed issue of fact. To resolve the dispute, we must carefully scrutinize the record developed on the property.

The claim submitted on May 29, 2003, by the Organization alleged an improper diversion. A memo from the Lead Crew Assignment Clerk to the Assistant Superintendent Stations dated May 30, 2003 stated "CREW ASSIGNMENT CLERK NOT ABLE TO FILL PIDS AT 6 AM OR AT 3 PM. PER - MANAGER S NOLDER DIVERSION WAS DONE. CAROLYN LAWRENCE WAS DIVERTED FROM TICKET OFFICE JOB WHICH STARTS AT 730 A-4P. CLAIM IS VALID."

On July 16, 2003, the Assistant Superintendent Stations responded to the claim, denying it on the ground, "Ms. Lawrence is a Ticket Agent her rate of pay is the same as a PIDS agent. Company does not pay diversion."

The Organization appealed to the Division Manager, Labor Relations who denied the appeal. At this level, the Carrier asserted for the first time that the Claimant had not been diverted, but had accepted an overtime assignment of 3:00 P.M. - 11:00 P.M. that did not overlap with her regular assignment which the

Division Manager, Labor Relations represented to be 7:30 A.M. to 2:00 P.M., and that the Claimant and the R & I Agent took it upon themselves to switch assignments. In support of this position, the Carrier submitted the assignment sheets for May 4, 2003, for the Ticket Office and the R & I Clerks.

The Ticket Office assignment sheet shows the Claimant's assignment as 7:30 A.M. to 4:00 P.M. This contradicts the Division Manager, Labor Relations' response that the Claimant's regular assignment did not overlap with the overtime assignment that he maintained she had agreed to work, as that assignment would have begun at 3:00 P.M.

The first line of the R & I Clerks assignment sheet shows for the PIDS V2 assignment, Lambert on vacation and "OT Nolan." The third line of the sheet shows for the PIDS 3:00 P.M. assignment, Entrop on vacation and "OT Lawrence." However, a line with arrows on each end connects Lawrence to Nolan. At the bottom of the sheet, the following is noted, "Lawrence in at 6 A PIDS. Nolan 3p PIDS (diverted)?" There is no explanation in the record as to who wrote these notes or any other explanation of their meaning.

The Carrier relies on a note at the bottom of the Ticket Clerks assignment sheet, which reads, "**per S. Nolder cannot change positions." The Carrier maintains that this note demonstrates that Supervisor Nolder precluded the Claimant and R & I Clerk Nolan from exchanging assignments and that they made the exchange without authority. On its face, however, the note is ambiguous. The note appears on the Ticket Clerks sheet rather than the R & I sheet. There is no asterisk in the body of the sheet; thus, it is impossible to tell by looking at the sheet to which assignment the asterisk applies. Moreover, the Carrier provided no statement from Supervisor Nolder explaining the asterisk or any explanation for the absence of a statement by Nolder.

Beyond the thinness of the evidence the Carrier offered to support its position, we are struck by what is lacking in the record. There is no statement by any relevant Carrier officer attesting to the alleged unauthorized shift exchange. There is also no explanation of why, if the Claimant's working the 6:00 A.M. PIDS position resulted from an unauthorized shift exchange, the Assistant Superintendent Stations did not assert it in his denial of the claim. Rather, the sole basis for the claim denial at the first level was a contention that because the Ticket Clerk and PIDS positions were paid at the same rate, the Carrier did not have to pay

diversion, an implied admission that the Claimant was diverted. Although the Carrier discounts the probative value of the Lead Assignment Clerk's memo, it offered no evidence to dispute its accuracy. Accordingly, on the basis of the record presented, we conclude that it is more likely than not that the Carrier diverted the Claimant rather than that the Claimant engaged in an unauthorized shift exchange.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of July 2007.