Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35477
Docket No. CL-35957
01-3-99-3-952

The Third Division consisted of the regular members and in addition Referee Andrèe Y. McKissick 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 Organization (GL-12512) that:

Please consider this claim of the District 1089 Protective Committee on behalf of Mr. F. Sherman, who is currently being held on position BG-631 to provide training to N. Blais. The Carrier has violated the current agreement between the National Railroad Passenger Corporation and the Transportation Communications International Union, particularly, but not limited to Appendix E, Extra Board Agreement, Article 5.

On Tuesday, February 24, 1998, position BG-632, Relief Mail & Baggage Foreman, Providence Station, was vacant due to the incumbent marking off. The employee on duty exhausted the seniority roster and was unable to get an employee to cover this position for the entire eight hour shift. Acting on your instructions, Mr. Blais, an employee who is in training for baggage/ mail position BG-631, was allowed to cover this shift at overtime upon the completion of his shift at 10:00 P.M.

Article 5 of the Extra Board Agreement states that should the incumbent refuse the overtime, it will be them offered to the senior, available, qualified (emphasis added), extra or regular employee in the territory whose position is protected by the particular extra board involved. Mr. Blais returned to work on his next scheduled shift with an employee (Mr. Sherman) training him on the very same type of position he was allowed to work at the punitive rate and therefore could not have been considered qualified to work this position.

Claim is made for eight (8) hours at the applicable punitive rate on behalf of Mr. Sherman. Mr. Sherman, the senior, available, qualified employee willing to work this position should have been allowed to cover this position but was not."

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.

At issue, is Rule 7-B-1, Claims for Compensation, which reads, in part, as follows:

"RULE 7-B-1, Claims for Compensation

(2) When a claim for compensation alleged to be due is based on an occurrence during a period employee was out of active service due to sickness, vacation, leave of absence, suspension or reduction in force, it must be made, in writing, within sixty (60) calendar days from the date the employee resumes duty.

When claims or grievances have been presented in accordance with this Paragraph (a), including exceptions (1) and (2), and are denied, the Corporation shall, within sixty (60) days from the date same as filed, notify whoever filed the claim or grievance (the employee or his representative) in writing, of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented, but this shall no be considered as a precedent or waiver of the contentions of the Corporation as to other similar claims or grievances."

The record reflects that the original claim was settled and payment was made for eight hours at the pro-rata rate for the loss of overtime work on February 24, 1998. Subsequent to this settlement, the Organization appealed to the Manager of Labor Relations for an additional four hours at the straight-time rate for this loss, as this dispute must be paid as presented.

The Organization claims that the Carrier failed to issue a timely response to the claim and thus must pay at the punitive rate of overtime. The Organization argues that Rule 7-B-1 requires that the claim must be paid "as presented." The Organization points out that the violation occurred on February 24, 1998; and the claim was presented for overtime on March 10, 1998. Settlement was on May 7, 1998, but only at the pro-rata rate.

In sum the Organization asserts that the Claimant's original Supervisor failed to respond, as required. Thus, the Organization reasons that the present claim must be paid as it was presented for the overtime rate.

The Carrier rebuts the Organization's assertions by maintaining that the claim was completely resolved locally. Thus, the Carrier contends the subsequent appeal is moot. The Carrier admits Supervisor Garden failed to communicate with Chairman Wells directly in writing until after the expiration of the time limit. However, the Carrier asserts that runarounds have historically been paid only on a pro-rata basis and cites numerous supporting Awards for his position. Lastly, the Carrier notes that the punitive, overtime rate is never paid for time not worked.

The Board finds that this claim must be sustained for the following reasons. The Carrier's response was admittedly late due to the failure of the Claimant's immediate Supervisor to advise the Organization of the settlement. The Board finds that Rule 7-B-1 states that the claim must be paid "as presented." Thus, the claim for the overtime assignment must be paid in its totality at the one and one-half rate, in compliance with the mandatory procedural requirements of the above Rule.

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 22nd day of May, 2001.