

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30786
Docket No. CL-30860
95-3-92-3-695

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM: "Claim of the System Committee of the Union (GL-10863) that:

Amtrak File No. TCU-TC-3647

- (a) Carrier violated the Rules Agreement effective July 21, 1972, as revised through November 15, 1988, particularly Rule 1 (Scope), 14 (Overtime) and other rules when, effective April 29, 1991, Supervisors M. Koerner, D. Harris, P. Kim, L. Shrbeny, W. Wujcik and A. Annette were notified they would each rotate on a weekly basis and come to work at 6:00 a.m. Monday through Friday and prepare and distribute morning reports. This is the advertised duties of Claimant, Secretary II, F. Shartell, and should be performed daily by her.
- (b) Claimant F. Shartell, beginning on April 29, 1991 and continuing each day except Saturday and Sunday, be allowed 2½ hours at the overtime rate of pay per day until this work is given to her to perform and Scope violation is stopped.
- (c) Claim filed in accordance with Rule 25 and to continue until proper employe performs this work."

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 waived right of appearance at hearing thereon.

Claimant entered service as a Clerk Typist I on March 25, 1975. At the time of this dispute, Claimant was assigned to Carrier's Washington, D. C. headquarters as a Clerk Typist II in the Transportation Department. Claimant worked 8:30 A.M.- 5:00 P.M., Monday through Friday, with Saturday and Sunday rest days, at a daily rate of \$96.27. The duties of Secretary II are:

"Provides secretarial support to Director-Transportation Programs and staff. Handles typing, filing, appointments, telephone messages, office supplies and other duties as assigned. Responsible for the assembly and distribution of daily morning reports to executive staff on an 'as needed' basis. Types confidential documents and evaluations. Provides back-up support for Senior Secretary and Executive Secretary as required."

On April 23, 1991 Carrier issued a memo instituting a rotating schedule, to begin April 29, 1991, for non-agreement supervisors to "prepare and distribute, commencing at 6:00 a. m., the Morning Report." The Organization submitted a claim that this violated primarily the Scope Rule and the Overtime Rule and requested that Claimant be allowed 2 1/2 hours at the overtime rate of pay per day until the work is returned to her position. Carrier denied the claim maintaining that the non-Agreement management employees had in fact been preparing and distributing the Morning Reports for the entire tenure of Claimant's incumbency in the Secretary II position. Further, Carrier asserted that Claimant's job bulletin did not have force or effect to establish an exclusive contractual right to work performance under the "general" Scope Rule. The Organization responded with evidence that Claimant had in fact been performing the work until April 29, 1991, pointed out that Carrier's April 23, 1991 memorandum transferring the work to managers would not have been necessary if they had always done the work, and again relied upon the express language of Carrier's job bulletin for Claimant's position.

On the basis of the record before us, we must conclude that Carrier did violate the Agreement when, beginning April 29, 1991, it transferred to supervisory employees specifically described Secretary II duties which Claimant had regularly performed as directed by Carrier's own job bulletin. Carrier's contention that the work in dispute had been "performed by management employees for over two years" is not supported by record evidence. The "description of duties" found in the bulletin for the Secretary II position clearly enunciates that the incumbent is responsible for the "assembly and distribution of daily morning reports." There is no indication on the record that prior to April 29, 1991, those duties had been rescinded or reassigned to any other position.

Although we are persuaded that a violation did occur, the damages claimed are excessive. The managers apparently performed the work prior to regular shift hours, but there is no indication that Claimant did not usually do this work during regular hours, nor that the task consumed no more than one hour's work daily. Accordingly, we sustain the claim to the extent of one hour at the straight time rate of pay for each day except Saturday and Sunday, from April 29, 1991, until the work is returned to the Secretary II position.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

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 6th day of April 1995.