

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30795
Docket No. CL-31057
95-3-92-3-848

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister 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-10885) that:

- 1) The Carrier, acting arbitrarily, capriciously, and in an unjust manner, violated Rules 1, 6 and other related rules of the Agreement when, by notices dated January 9, 1991 and January 16, 1991, it designated as partially excepted an advertised new Lead Material Control Clerk position with assigned hours of 3:00 p.m. to 11:00 p.m. with weekend rest days.
- 2) The Carrier shall now be immediately required to adjust Carrier records so as to reflect that the above-described Lead Material Control Clerk position is a fully covered position and not a partially excepted position. And Carrier shall, should any qualified employee ever be disallowed to, by bids or displacement, exercise his/her seniority to access the position, be required to make such employee whole for any loss he or she may incur by such disallowance."

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.

On January 9, 1991, the Carrier issued a special notice seeking applications for Lead Material Control Clerk in Chicago, Illinois. This position was identified as a new partially excepted position with assigned hours of 3:00 P.M. to 11:00 P.M., Monday through Friday. A second notice was issued on January 16, 1991, that was identical in all respects to the first notice except that it stated the reason for the posting being a change of hours. The position, as advertised in the second notice, was assigned to Kevin Smith, the senior applicant.

The Organization contends this position should be a fully covered position because the Carrier did not seek or obtain the Organization's agreement to establish it. The Organization cites Rule 1 of the Agreement, particularly Sections (b), (c), and (f), reading as follows:

"b. Except as specifically provided herein, this Agreement shall not apply to the positions and employees assigned thereto as set forth in Appendices A-1 and A-2. It is agreed, however, that they are a part of the crafts and classes covered by this Agreement.

c. Rule 5 (promotion), Rule 6 (Bulletin-Assignment and Rule 10 (Reducing and Increasing Forces) shall not apply to positions identified as "Partially Excepted Positions" listed in Appendix B.

* * *

f. Subsequent to November 2, 1974, the Company, in establishing the positions which fall under the provisions of Sections (b) and (c) above, shall notify the duly accredited representative of the title and duties of the positions established. Thereafter, positions established which fall under the provisions of Section (b) and (c) shall be by agreement of the parties signatory hereto."

The Organization agrees that there had been a properly established partially excepted position of Lead Control Clerk at this location, but the hours of assignment for that position had been 7:00 A.M. to 3:00 P.M. It asserts the position working second trick is a different position from the original first trick position. According to the Organization, the hours of assignment of a position is one of the factors it considers when it determines

whether it will agree with the Carrier that the position may be partially excepted. One of the variables, according to the Organization, is the number of employees who will be supervised by the incumbent of the position in question.

Although the Carrier has argued the claim should be dismissed because it is hypothetical and seeks a declaratory judgment, the Board finds an actual controversy exists. At issue is whether the Carrier established a new partially excepted position without the consent of the Organization. If so, the position must be a fully covered position, subject to all Rules of the Agreement.

We agree with the Carrier, however, that it did not establish a new position. Changing nothing more than the hours of a position does not create a new position. In reaching this conclusion, the Board notes Rule 13 - Starting Time.

Sections (d) and (e) of that Rule, which are applicable to partially excepted positions, addresses the procedure for changing the starting times of positions. The Rule does not identify the position as being a new position once the hours are changed. In fact, when the hours are changed by less than two hours, the Carrier is not obligated to rebulletin it. Rather, the incumbent has ten working days to displace from the position should he or she choose to do so. Furthermore, despite the Organization's assertion it had agreed to establish only a first trick position, the Board has been furnished no evidence to support such an assertion. Accordingly, we must find that the position in question is not a new position and is, therefore, partially excepted.

AWARD

Claim denied.

O R D E R

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 6th day of April 1995.