

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31582
Docket No. CL-32429
96-3-95-3-318**

The Third Division consisted of the regular members and in addition Referee James E. Conway 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 Organization (GL-11150) that:

The following claim is presented to the Company in behalf of Claimant A. Nesel.

(a) The Carrier violated the Clerks Rules Agreement effective July 21, 1972, as revised, particularly Rules 7, 14 and other rules, when it failed to call and work Claimant Nesel at Rensselaer, NY, during the first shift on November 12, 1993, and instead assigned and permitted junior clerk V. Hunter to work at the overtime rate of pay.

(b) Claimant Nesel should now be allowed eight (8) hours punitive pay based on the appropriate hourly rate for November 12, 1993, on account of this violation.

(c) Claimant was senior, qualified, available and should have been called and worked in accordance with Rules 7 and 14.

(d) This Claim has been presented in accordance with Rule 25 and should be allowed."

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.

The sole matter for consideration and determination in this case is whether, on the record here, the agreed-upon language of Rule 14, read in its entirety and applied to the facts developed in the on-property handling, compelled the Carrier to call the Claimant for overtime on November 12, 1993 rather than rely upon a junior Clerk Typist called in for overtime four hours in advance of her regular eight hour shift.

The Organization's position is that the work normally performed by Claimant, a Statistical Clerk at the location holding a 4:00 PM - 12:00 Midnight shift with Friday and Saturday rest days and available for overtime on November 12, is that which was performed by the junior Clerk Typist/Statistical Clerk on that date. In Claimant's view, Rule 14 (e) is dispositive:

"If overtime is necessary in filling a short vacancy and the vacancy is on a rest day relief position, the regular occupants of the positions being relieved shall work the rest days of their own position if they so desire. Where work is required by the company to be performed on a day which is not part of any assignment, it may be performed by an available unassigned employee who would otherwise not have forty (40) hours work that week; in all other cases by the regular employee."

Carrier appears to have argued on the property, and has clearly stressed in its Submission and arguments before this Board, that Claimant was not the appropriate person for the disputed overtime assignment because the work which the junior employee was asked to perform on an early call-in was Clerk Typist work for which Claimant was unqualified, and there has been no contrary showing. It asserts that, except as limited by the Agreement, it is the function of management to determine what work is necessary within the limitations of the rules. Indeed, Carrier argues, had the Claimant been offered the overtime work, the junior employee would have had a legitimate claim. Carrier asserts that the rule governing the rights and obligations of the Parties is Rule 14 (f), which reads:

“(f) If overtime is necessary before or after assigned hours, employees regularly assigned to the job category at the location shall be given preference in seniority order; the same principle shall apply to working extra time on holidays. Vacancies, including vacancies on rest day relief positions not filled by above, shall be filled on a day-to-day basis in seniority order by employees regularly assigned to the job category at the location and who are available.”

The Organization effectively makes the case that when the contract requires performance of defined work by specific employees, removal and reassignment of such duties to others represents a violation of the rules, and warrants a remedy.

The text of Rule 14, as with many collectively bargained terms, may be less than incandescent but it is susceptible of being applied to the overtime entitlement issue presented here. Unfortunately, there is little of record to aid this Board in that task. To determine whether the Carrier's action was violative of the Agreement, it is, in our view, vital to know whether "the regular occupant of the position being relieved" was the Claimant or the junior clerk who came in early. To make that determination, and to know whether Rule 14 (f) is applicable, as urged by the Carrier, it is critical to know precisely what work was accomplished during the time frame at issue, as well as exactly what the normal job content of the contending employees was at the time. Lacking those facts, it is impossible to judge whether the Claimant was "the regular occupant of the position" or the junior clerk was "the employee regularly assigned."

We get no insights on those issues from this record. In the absence of facts, persistent assertions of the importance of seniority or of the need for a broad application of management rights do little to assist with reaching a principled decision. In the same vein, since the language of Rule 14 is not entirely unambiguous, some discussion of the parties' past application under the circumstances - which must occur with some frequency - would have been instructive. The anemia of this record is further illustrated by the lack of a single previous Award involving this Division, these Parties, this Rule, and similar or analogous facts, despite the introduction of multiple past Awards, some of which antedate even this Referee.

The Organization appears for the first time to have introduced within its Submission a bulletin and a new argument regarding the nature of the reports completed between 12:00-4:00 PM on the date in question. Both shed some degree of light on the issues here presented. The Carrier has, however, properly objected to the presentation of material not discussed on the property, and Carrier's position is well-founded.

In view of the state of this record, we deny this claim.

AWARD

Claim denied.

ORDER

The 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 29th day of August 1996.