

CORRECTED

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31584
Docket No. CL-32437
96-3-95-3-338

The Third Division consisted of the regular members and in addition Referee James E. Conway 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-11152) that:

The following claim is hereby presented to the Carrier on behalf of Claimant Charlie Noble.

- a. The Carrier violated the Clerks' Rules Agreement particularly Rules 1, 14, and other Rules, when it permitted and allowed Laborer, John Sappington to perform the duties of Material Control Clerk, on March 12, 1994, at the Beech Grove Amtrak Facility, specifically loading wheels, work which is performed specifically by TCU Clerks Mon-Fri in the Material Control Department. This work was performed between the hours of 8:55 a.m. and 11:25 a.m. and failed to call and work Claimant to perform this work.
- b. That Claimant Charlie Noble now be allowed eight (8) hours pay, at the punitive rate of \$13.54 per hour, for March 12, 1994, on account of this violation.
- c. Claimant is qualified, was available and should have been used to perform 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.

As Third Party in Interest, The American Railway and Airway Supervisors Association was advised of the pendency of this dispute, but did not file a Submission with the Board.

A review of this record reveals that Third Division Award 31583 addresses substantially the same relevant facts and arguments comprehended by this dispute. In that case, the Organization contended that performance of wheel loading by a Foreman III on March 5, 1994 violated the SCOPE, OVERTIME and other rules on the grounds that this work belonged exclusively to Material Control Clerk employees. Here, the facts giving rise to the claim involved performance of wheel loading by a Laborer at the same facility on the following Saturday, and the arguments advanced by both Parties in support and in defense of their respective positions are identical to those summarized in our earlier Award.

This Board denied the Organization's earlier claim on the basis that it had failed to bear its burden of establishing by probative evidence that the Agreement reserves the wheel loading function exclusively to Material Control Clerks. Accordingly, for that same reason we find this claim to be without merit.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

Form 1
Page 3

Award No. 31584
Docket No. CL-32437
96-3-95-3-338

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of August 1996.