

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31852
Docket No. CL-32204
96-3-94-3-632

The Third Division consisted of the regular members and in addition Referee Fred Blackwell 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-11114) that:

**In behalf of Clerk-Steno 2CCS-1, T. Saunders, Roster No. 134, 8:30 a.m.
- 5:00 p.m., relief Saturday and Sunday, that:**

(a) The Carrier violated the Rules Agreement effective September 1, 1976, as amended and revised, particularly Appendix E (The Extra List Agreement) when on the dates of September 15 and 17, 1992, Junior Clerk, Roster 312, C. Williams worked overtime.

(b) Claimant T. Saunders available and not called and qualified now be allowed 1 hour 45 minutes time and one-half for September 15, 1992, and 25 minutes time and one-half for September 17, 1992, to satisfy this claim.

(c) Claim filed in accordance with Rule 7-B-1, 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 were given due notice of hearing thereon.

This dispute arises from the claim of Washington, DC Clerk-Steno Takeela Saunders that on September 15 and 17, 1992, the Carrier violated the Agreement by permitting a junior Clerk-Steno, Carolyn Williams, to work an overtime assignment that should have been assigned to Claimant Saunders. Claimant's regularly assigned hours on the claim dates were 8:30 A.M. to 5:00 P.M.; Clerk-Steno Williams' regularly assigned hours on those dates were 8:00 A.M. to 4:30 P.M. The claim is that Clerk-Steno Saunders should be compensated for one hour and 45 minutes of overtime and for 25 minutes of overtime, worked, respectively, by Clerk-Steno Williams on September 15 and 17, 1992. The claim has been denied on the basis that the overtime performed by Clerk-Steno Williams was in connection with her own assignment following her assigned hours on the claim dates, that the overtime in question was not unassigned overtime as contended by the Organization, and that inasmuch as the Claimant's assignment ended at 5:00 P.M., the Claimant was not available to perform the overtime assignment which commenced at 4:30 P.M. on each of the claim dates.

The Organization asserts in the Joint Submission, without challenge, that Clerk-Steno Williams' regular rate on the claim dates was \$12.70 an hour and that for the overtime she was paid the rate of TPMS Clerk of \$13.00 an hour. The fact that Clerk-Steno Williams was paid \$13.00 an hour for the overtime in question, rather than her regular steno rate of \$12.70 per hour, negates the Carrier's contention that the work performed by Ms. Williams was in conjunction with her regular duties. This establishes the validity and merit of the claim.

However, the Carrier correctly states that Claimant Saunders could not have commenced working the overtime at 4:30 P.M., because she performed her own duties until 5:00 P.M. The Organization responds to this point with the contention that because there is no showing of record that the work had to be performed starting at 4:30 P.M., rather than 5:00 P.M., the Claimant's non-availability for the overtime between 4:30 P.M. and 5:00 P.M. should not negate or require a 30 minute reduction from the claim. This contention, although plausible so far as it goes, would have the Board make the finding that the work could have started at 5:00 P.M., rather than at 4:30 P.M., without the benefit of affirmative evidence of record. Such finding would be extremely speculative and thus unsound.

Accordingly, looking to the established facts of record, the claim will be sustained on the basis that the Claimant could not have started working the overtime until 5:00 P.M. Accordingly, the claim for one hour and facts 45 minutes on September 15 will be

sustained for one hour and 15 minutes. The claim for 25 minutes on September 17 will be denied.

AWARD

Claim sustained in accordance with the Findings.

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 4th day of March 1997.