

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31853
Docket No. CL-32207
96-3-94-3-633**

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-11115) that:

This constitutes a formal claim (and grievance) submitted (and filed) on behalf of (Claimant) Thomas Tringali, in accordance with the provisions of Rule 7-B-1 of the Agreement between 'Amtrak' and 'TCU' dated July 27, 1976, as amended and revised. Claim and Grievance that:

The Carrier (alone or in concert with other responsible/applicable parties) arbitrarily, capriciously, intentionally, and/or maliciously violated the aforementioned Agreement, particularly 'The Preamble,' Rules 1, 2-A-5, 3-F-2, 4-A-1, 4-F-1, 4-F-2, 5-C-1, 5-E-1, 9-A-1, 11-A-1; Appendix E: Articles 1, 4, 5, 9A, 9B, 12A, 12C, 12F, 12G, and 15, 'Memorandum of Agreement' dated May 27, 1982, particularly 'new rule' designated 'training'; and other Rules, appendices; the Railway Labor Act, and other federal and state laws; and Claimant's rights under the aforementioned, when:

1. The Carrier assigned and allowed regularly assigned employee D. Smith, the incumbent of a K Tower Regular Relief Position, location Washington, DC, to train on positions TD1 and TD2 location K Tower, respective hours 7:00 a.m. - 3:00 p.m. and 3:00 p.m. - 11:00 p.m., Mondays through Fridays, for a continuous period starting (and including) February 1, 1993, through (and including) March 12, 1993, (thus for) and:

Failed to instead assign and allow K Tower Extra List Employee T. Tringali to train (post) on the aforementioned positions, at the aforementioned times, on the aforementioned days, during the aforementioned period.

2. D. Smith is the permanent incumbent of the K Tower Regular Relief Position comprised of the following assignments: Assistant Train Director #3, hours 11:00 p.m. - 7:00 a.m., on Mondays, Thursday and Sundays; Train Director #3, hours 11:00 p.m. - 7:00 a.m., on Fridays and Saturdays; days of rest, on Tuesdays and Wednesday.

The positions/work/training assignments, referred to in paragraph '1.' above, do not constitute positions currently assigned to either D. Smith or the regular relief position of which he is the incumbent, at anytime preceding (and including) February 1, 1993, and for the entirety of time following thereafter through and including March 12, 1993.

The provisions of the Agreement only allow for regularly assigned employees to receive additional training to 'remain qualified' for positions to which 'currently' assigned.

No provisions exist to allow the training of regularly assigned employees on positions to which not assigned, never qualified on, or not awarded to by bid or through the exercise of seniority.

3. Claimant Tringali was/is entitled to the training/work that the Carrier assigned to D. Smith.

The aforementioned positions/training assignments/work are covered by and accrue to the Extra List on which Claimant holds a position.

Claimant Tringali was/is entitled to the aforementioned work/training assigned to D. Smith, as mandated by the provisions of the Agreement, particularly Appendix E: Article 9a and 9b, and other rules.

4. Claimant Tringali was never assigned to qualify on the aforementioned positions which are protected by the extra list to which he was continuously assigned during the entirety of the relevant time period.

5. The Carrier violated the Agreement when it assigned and allowed Regular Relief Employee D. Smith to train/post on position TD-#2, K Tower, 3:00 p.m. to 11:00 p.m., Mondays through Fridays, on February 1, 2, 3, 4, 5, 8, 9, 10, 11 and 12, 1993, and to train/post on position TD-#1 K Tower, 7:00 a.m. to 3:00 p.m. Mondays through Fridays, on February 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, March 1, 2, 3, 4, 5, 8, 9, 10, 11 and 12 1993, and:

Failed to instead assign and allow Claimant Tringali to the work/training assignments above or to compensate him in lieu thereof for each and all of the specified dates.

6. Claimant Tringali was entitled to each and all of the aforementioned assignments/work under the provisions of the Agreement; Regular Relief Employee D. Smith was not.

Claimant Tringali was also entitled to the compensation/wages attached thereto for each assignment and on each and every date.

7. Because of these violations, the Carrier will now allow Claimant Tringali eight (8) hours pay at the appropriate pro rata/punitive rate for each of the again specified dates: February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 1993, March 1, 2, 3, 4, 5, 8, 9, 10, 11 and 12, 1993. Present total claim for the specified dates stands at 240 hours pay at the appropriate pro rata/punitive rate.

8. Furthermore, as provided for in paragraph (i) of Rule 7-B-1 and in accordance with the entirety thereof, this claim is filed retroactively covering a 60 day period preceding the effective filing date of this claim/grievance and constitutes a continuing claim/grievance additionally covering each violative incident as detailed previously that occurs following March 12, 1993.

Accordingly, the Carrier will additionally allow Claimant eight (8) hours pay at the appropriate pro rata/punitive rate for each and every violation and date as described herein prior to and following the date specified herein until this claim/grievance and the Carrier's violations are respectively adjusted and ceased.

9. This claim/grievance has been properly filed/submitted in accordance with the relevant portions of the Agreement.

Its validity is indisputable and unmistakable.

The Carrier's ability to invoke the cessation of its violative acts and provide the compensatory restitution specified herein are extant and immediately obtainable.

Thus, the Carrier must now allow the demanded payment to Claimant upon receipt of this claim/grievance.

The failure to provide remedy and refusal of payment will stand as clear evidence of intent to inflict damage and of malice and will increase the carrier's legal liability."

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.

The issue presented by the herein claim is whether the Carrier violated its Agreement with the TCU dated July 27, 1976, by not assigning the Claimant, an Extra Assistant Train Director, to train on the positions TD-1 and TD-2, 1st and 2nd trick Train Director positions, "K" Tower, Washington, DC, in the period February 1 through March 12, 1993, and by instead assigning to training during said period regular relief employee D. Smith, a qualified Train Director, covering TD-3, the 3rd trick Train Director job at "K" Tower, Washington, DC, two nights a week.

The Organization cites as support for the claim the following:

Preamble

1	Scope
2-A-5	Time In Which To Qualify
3-F-2	Accredited Representative
4-A-1	Days Work and Overtime
4-F-1	Established Rates and Positions
5-C-1	Extra Boards
5-E-1	40 Hour Work Week
9-A-1	Exception To Rule
11-A-1	Effective Date and Changes
Appendix E	Extra Boards
Articles	1, 4, 5, 9A, 9B, 12A, 12C, 12F, 12G, 15
May 27, 1982	Memorandum of Agreement - Training

The Organization contends that the Carrier removed a qualified, regularly assigned employee, D. Smith, from his regular position to undergo additional training, and that because the training was not needed by Smith for him to remain qualified for his regular assignment, the training of Smith was barred by the explicit language of the Training Agreement. Therefore, the training in dispute should have been assigned to Claimant and not to employee Smith.

The Carrier submits that the Rules cited by the Organization do not establish that Claimant had a demand right to be trained on TD-1 and TD-2, the 1st and 2nd trick Train Director positions at "K" Tower, Washington, DC, during the period February 1 through March 12, 1993, and that the assignment of employee Smith to the disputed training instead of Claimant was contractually permissible.

The Carrier further submits that the Training Agreement affords no employee, either regularly assigned or extra, a demand right to training, and that it is the Carrier's prerogative to give employees appropriate training as determined by the Carrier. In this case the Carrier decided to have senior employee Smith, who was already a qualified Train Director, undergo additional training as a Train Director on the 1st and 2nd tricks at "K" Tower, which tricks, during the normal Monday through Friday work week, carried the bulk of passenger service in and out of Washington's Union Station; the additional training was provided Smith so that he could provide vacation relief to the regularly assigned Train Directors on these tricks. The Carrier's training decision concerning employee Smith, the Carrier says, did not aggrieve Claimant in any way.

The parties' Training Rule, as set out in the Carrier's Submission, reads as follows:

"Training

When employees require additional training to remain qualified for positions to which currently assigned, they may be assigned to classroom or on-the-job training at such times and places as necessary. Employees will be paid at the pro rata rate for classroom or on-the-job training not to exceed eight hours pay per day. If it is necessary to change the rest days or working hours of employees in order to provide this training, the Carrier may do so and no overtime shall be paid as long as two rest days are allowed in a seven-day period commencing with the first day of training."

After due assessment of the foregoing and of the entire record, the Board finds no Rule or other authority on which it could be concluded that the Claimant was entitled to be trained in the period February 1 through March 12, 1993, on the 1st and 2nd trick Train Director positions at "K" Tower, Washington, DC, and/or that the Carrier violated any Agreement Rule by assigning senior employee Smith to train on said positions during the referenced period. Accordingly, there is no basis of record on which the claim could be sustained and a denial Award is therefore in order.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 4th day of March 1997.