

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31858
Docket No. CL-32358
97-3-95-3-173**

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-11139) that:

Claim is filed in behalf of those listed below:

(a) The Carrier violated the TCU/NRPC Corporate Clerical Agreement, in particular Rule 14(b) and others, when it directed and forced Claimants, hours of assignment as shown below, rest days Saturday and Sunday, to work an overtime assignment on Sunday, April 11, 1993, from hours as shown below as a Reservation Sales Agent at the Fort Washington RSO. The Carrier failed to compensate the Claimants six hours pay for four or less hours worked. The Claimants were directed to work in reverse seniority.

(b) That each Claimant now be allowed six hours pay for April 11, 1993, when the Carrier violated the above-mentioned agreement.

(c) Claim is presented in accordance with Rule 25, is in order and should be allowed.

<u>Name</u>	<u>Assigned Hours</u>	<u>Hours worked on 4-11-93</u>
K. McIntosh	9:00 a.m. - 2:00 p.m.	9:00 a.m. - 12:00 noon
V. Irick	9:00 a.m. - 2:00 p.m.	10:00 a.m. - 10:46 a.m.
C. Taylor	9:00 a.m. - 2:00 p.m.	10:03 a.m. - 11:32 a.m.
J. Dubus	9:00 a.m. - 2:00 p.m.	10:00 a.m. - 12:02 p.m.
P. Stephens	9:00 a.m. - 2:00 p.m.	10:00 a.m. - 10:46 a.m.
J. Meshler	9:00 a.m. - 2:00 p.m.	10:00 a.m. - 10:46 a.m.
R. Crowder	6:00 p.m. - 11:00 p.m.	2:00 p.m. - 5:05 p.m.
K. White	6:00 p.m. - 11:00 p.m.	2:00 p.m. - 5:00 p.m.
R. Egan	6:00 p.m. - 11:00 p.m.	2:00 p.m. - 5:00 p.m.
T. Nash	6:00 p.m. - 11:00 p.m.	2:00 p.m. - 5:04 p.m.
R. Branam	9:00 a.m. - 2:00 p.m.	2:00 p.m. - 5:14 p.m.
K. Blackwell	6:00 p.m. - 11:00 p.m.	6:30 p.m. - 7:36 p.m.
R. Jacobs	6:00 p.m. - 11:00 p.m.	6:30 p.m. - 8:52 p.m.
S. Griffin	6:00 p.m. - 11:00 p.m.	6:30 p.m. - 6:45 p.m.
M. Henry	6:00 a.m. - 11:00 a.m.	7:00 p.m. - 8:25 p.m."

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 claim here is that each of 15 Claimants should be allowed six hours pay for their service at the Carrier's Fort Washington, Pennsylvania, Reservation Sales Office (RSO) on April 11, 1993, under Rule 14(h) which reads as follows:

"RULE 14 - OVERTIME

* * *

(b) Employees notified or called to perform work on a rest day of their regular assignment shall be allowed a minimum of six (6) hours pay for four (4) hours work or less and if held on duty in excess of four (4) hours, time and one-half will be allowed on a minute basis."

The Organization submits that the Carrier's contention that the Claimants were involved in a normal exercise of the "excused" or "E" time arrangement, is not valid and that there is a distinguishing line between the circumstances of this case and the normal exercise of "E" time. More specifically, the Organization submits that because the Carrier erred in overstaffing the RSO on Easter Sunday, April 11, 1993, the Claimants were required to report for work and to work, and that because of such overstaffing, the Carrier is obligated to pay each Claimant the six hour minimum for April 11, 1993 required for less than four hours of work by Rule 14(h).

The Carrier submits that the "E" time arrangement has been in place at the subject RSO since 1975, that the arrangement is mutually beneficial to the employees and the Carrier, and that no claim, prior to the instant claim, has ever been filed and progressed as a result of the Carrier's use of the "E" time arrangement.

The "E" time arrangement, as revealed by the record, commenced at the subject RSO in the latter part of 1974. "E" time allows employees to take time off voluntarily without pay, in hours or full days on any day of the week including holidays. No Reservation Agent, called for work, has ever been forced to leave work under "E" time, and when "E" time is in effect, the employees offered "E" time may remain at work for the full eight hours at their option.

In assessing the foregoing and the entire record, including the parties' Submissions in support of their positions in this case, the Board concludes that there is no basis of record on which these claims could be sustained. The Board finds, specifically, that because these Claimants voluntarily left work after three hours on the claim date, under the "E" time arrangement, in circumstances in which they could have remained at work for a full eight hour tour, their claims for a minimum of six hours pay under Rule 14(h) are estopped. One cannot accept the benefits of an arrangement such

as "E" time and, concurrently, claim compensation that would be due only if the arrangement were not in place. In short, the Claimants will not be permitted to leave work before completing an eight hour shift with permission, and then claim pay for time that they did not work, but could have worked up to the full eight hours, had they opted to do so. Accordingly, these claims are estopped because of the acceptance by the Claimants of the benefits of the "E" time arrangement.

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.