

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31898
Docket No. CL-31952
97-3-94-3-269**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 TCU (NEC-1106) (GL-11037)
that:**

The following claim is presented to the Carrier in behalf of J. W. Eskew, Relief Crew Dispatcher, tour of duty various, with rest days of Thursday and Friday and a rate of pay of \$103.58 per day.

The Carrier did violate the Northeast Corridor Clerical Agreement between Amtrak and TCU effective September 1, 1976, and as revised and amended particularly the Scope Rule along with Rule 2-A-1-1 as well as others.

Starting on Sunday September 1, 1991, (date of Superintendent's Bulletin N-22, W-25 and S-21) from CSX Transportation Office of Division Manager Florence Division, the Amtrak and CSX crews use a computer, placed in the Washington Crew Dispatcher's Office to secure all their train bulletins, train orders and any special instructions along with reporting their pay information over this said computer.

Claimant now to receive eight hours pay at the time and one-half rate of pay, starting with September 1, 1991, (effective date of Superintendent's Bulletin) for every Tuesday thru Friday 7:00 a.m. to 3:00 p.m. shift and to continue until such time this computer is removed from Washington Crew Dispatchers Office is given back this work which is his per advertisement.

As of October 28, 1991, claim is worth \$4,971.84 and continuing at the rate of \$155.37 per day until violation is stopped.

This claim is presented to the Carrier in accordance with Rule 7-B-1."

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 claim concerns, according to the Organization, the Carrier's action in "installing a computer terminal outside the Crew Dispatchers office at Washington, DC, [to enable] Amtrak and CSX crews to operate the computer and enter their payroll information, retrieve all bulletins, train orders and any special instructions." The Organization contends this has been "traditional and customary work assigned exclusively to and performed by clerical employees using their computer equipment and printers."

On a procedural basis, the Organization contends that the Carrier is in default as to Rule 7-B-1 in that no response was received to the initial claim. Rule 7-B-1 states in pertinent part as follows:

"[When claims are presented and denied the Carrier] shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented, but this shall not be considered as a precedent or

waiver of the contentions of the Corporation as to other similar claims or grievances."

The record leaves no doubt that the claim, under date of October 28, 1991, was not answered at the first level. The Organization so noted in progressing the matter to the second level. On April 3, 1992, the Division Manager, Labor Relations responded to this and other claims as follows:

"A careful review of these claims confirms they are meritless. The rules cited were not violated. The remedy sought is unwarranted and improper; therefore the claims are denied."

The Carrier argues that it was not required to reply to the claim in the first instance, based on a Memorandum of Agreement of April 11, 1990 concerning merger of TC and Clerical rosters. Paragraph G of that Agreement includes a "commitment not to file claims regarding these provisions and the understanding that the company is not required to answer any such claims in that such claims are considered automatically denied."

To this, the General Chairman replied in part:

" . . . Carrier is not required to answer any claim pertaining to [train order provisions and the instructor's rate] as they are considered automatically denied. This paragraph G does not relieve carrier from answering the aspects of the claim, i.e., securing bulletins, special instructions and entering payroll information into the computer."

Carrier's argument that the Organization modified the claim is not persuasive. Further, the Board concludes the Carrier was obligated to reply to the original claim, since its content clearly exceeded that covered in paragraph G. The Organization's procedural position has merit. In accordance with Rule 7-B-1, the Award will sustain the claim from its inception to April 3, 1992, when the Carrier did reply to the claim. There is no basis to find that the remedy must extend indefinitely beyond this date. Many previous Awards support this analysis in instances where the monetary remedy is a continuing one. Further, the claim is excessive from the outset in seeking pay at the punitive rate; straight-time pay is appropriate in this circumstance.

As to the merits of the matter, the Board finds the use of a computer terminal to provide or receive information a reasonable change in means of communication. No displacement of clerical personnel was indicated, nor were essential clerical functions disturbed. The Organization has not convincingly demonstrated that such is a violation of the cited provisions of the Agreement. On the merits, that is as to any remedy beyond April 3, 1992, this portion of the claim is 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 the Third Division**

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