

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31951
Docket No. CL-32340
97-3-95-3-153**

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-11133) that:

- (a) Claim is hereby presented to the Carrier in behalf of C. Lawrence, account the Carrier violated the Amtrak Clerks' Rules Agreement particularly Rules 14 and other rules, as amended by the September 6, 1991 Agreement when it failed to properly call Claimant for work at the Depew, New York Ticket Office on July 8, 1993 from 7:30 a.m. to 4:00 p.m. and instead allowed and permitted and diverted regular assigned Clerk Dalka to work mail on the claim date.**
- (b) The Claimant C. Lawrence, now be allowed 8 hours pay at the appropriate punitive rate for the date claimed above until this violation is corrected. Claimant is qualified, was available and should have been called and worked.**
- (c) This claim is presented in accordance with Rule 25 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.

The issue presented by the confronting record is whether the Carrier's use of Ticket Clerk Dalka on July 8, 1993, to assist in loading mail at Buffalo-Depew, New York, created a vacancy in Dalka's Ticket Clerk job at the Depew, New York Ticket Office, that Ticket Clerk C. Lawrence should have been called to fill.

The vacancy in Dalka's Ticket Clerk position was created, the Organization contends, as a result of the Carrier's assignment of mail handling duties to Ticket Clerk Dalka, and that this diversion of Dalka from his Ticket Clerk duties to work on mail handling violated Rule 14(l) which provides that: "Employees shall not be required to suspend work during regular hours to absorb overtime." The Carrier submits that the assignment of Ticket Clerk Dalka to help load mail on the claim date was for a de minimis period of approximately 20 minutes, and that such assignment did not violate Rule 14(l).

The facts of record show that Ticket Clerk Dalka worked his Ticket Clerk position at the Depew, New York Ticket Office on July 8, 1993, on his assigned tour of 7:30 A.M. to 4:00 P.M. Two extra employees were called for four hours of overtime to work the mail on Train 49/449 with the regularly assigned Baggage man and Mail Handlers on duty. Train 49/449, scheduled for arrival at Buffalo-Depew, New York, at approximately 5:00 A.M., had delays en route due to mechanical problems and arrived at approximately 8:15 A.M. One of the two extra employees on the four hour overtime call was released to begin his assignment for the day at Buffalo Exchange at 7:00 A.M. The Mail Crew on duty and the Baggage Clerk on duty remained on overtime, along with the second extra Clerk on the overtime call, for the arrival of Train 49/449. These three (3) employees loaded the mail on to Train 49/449; Clerk Dalka assisted with this loading work for approximately 20 minutes.

After due assessment of the foregoing, and the whole record, including the parties' Submissions in support of their positions in this case, the Board concludes and finds, in line with prior authorities, that a sustaining Award is in order; however the request for eight hours at the overtime rate is excessive on the facts at hand and the Board will award one hour of compensation at the overtime rate to Claimant.

The Board considers it important to note that although the claim is sustained, on the basis of prior authorities, and to preserve the integrity of the Agreement, the record contains considerable ambiguity on the fact issue of whether Ticket Clerk Dalka was required to suspend work in order to avoid overtime within the meaning of Rule 14(l). Further, the record evidence does not clearly and definitively establish that the assignment of the 20 minutes of mail loading work to Clerk Dalka, was driven by the intent to avoid overtime; the other three employees who loaded mail, along with Clerk Dalka, were on overtime when the mail loading assignment was executed. Thus, the principal effect of the 20 minutes of help from Dalka was that it helped expedite the movement of Train 49/449 that was running late; if Train 49/449 had operated on time, that is arriving at 5:00 A.M. and leaving at about 5:30 A.M., it would have departed Buffalo-Depew before Clerk Dalka's tour of duty began at 7:30 A.M. Another factor present in this situation is that the note to Rule 14(l) provides that a Clerk may be used to assist another Clerk during his tour of duty in the same office or location in the same seniority district where he works without penalty.

In these circumstances, and on the whole record, in line with prior authorities and to preserve the integrity of the Agreement, the Board awards one hour pay at the overtime rate to Claimant.

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 19th day of March 1997.