

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32147
Docket No. CL-32842
97-3-96-3-154

The Third Division consisted of the regular members and in addition Referee George Edward Larney 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-11208) that:

Please consider this letter as a claim of the local protective committee. The Carrier has violated the current rules agreement particularly but not limited to the extra board agreement articles 1, 2, 6 and Rule 5-E-1.

On each Saturday and Sunday the carrier is assigning work under the station extra board to employes who own positions under the jurisdiction of the Ticket Office extra board. The work of the Gateman and Solari position is being performed by the information clerks on weekends. This work should be performed by the gatemen and solari clerks. The announcement of trains is the major part of the duties but all of the other side jobs that must be performed by Gatemen and Solari clerks during the general performance of duties can not be performed because the positions do not exist on weekends. The work is performed by positions IC-815 and IC-819 under the ticket office extra board.

Therefore claim is made on behalf of Mr. Robert Conti for eight hours pay at the punitive rate for each shift 6 a.m. - 3 p.m. and 3 p.m. - 12 midnight on each and every Saturday and Sunday beginning 60 days from the date of this claim and continuing until a satisfactory agreement is reached with this organization.

This claim is presented in accordance with Rule 7-B-1 and is in order 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 factual background upon which this claim is predicated is uncontested. During weekdays, given the volume of trains operating in regular service at Boston South Station, Carrier employs two Gatemen, an "inside" Gateman and an "outside" Gateman per morning shift and per afternoon shift. Gatemen work the platform and also operate the Solari Board located inside the station. The latter work of the "inside" Gateman entails announcing and posting trains. Given that the volume of trains operating in regular service on the weekends is less than one-half that on the weekdays, Carrier employs only one Gateman per morning shift and one Gateman per afternoon shift. On each of these shifts, the Gateman is performing the duties of the "outside" Gateman. The record evidence reflects that for over one year prior to the filing of the subject claim (February 10, 1993), the "outside" Gateman on the weekend fashioned an informal arrangement with the Information Clerks whereby the Information Clerks perform the duties of the "inside" Gateman, to wit, announcing and posting of trains but only on the weekends. Carrier denies it had any involvement in initiating this informal arrangement though it acknowledges that it condoned the concept.

The gist of the instant claim as described by the Organization is that since the work of Gatemen falls under the jurisdiction of the Station Extra Board, also known as Extra Board Territory #2, whereas, the work of Information Clerks falls under the jurisdiction of the Ticket Office Extra Board, also known as Extra Board Territory #1, the informal arrangement existing between the weekend "outside" Gatemen and the Information Clerks violates various Agreement Articles governing the administration and operation of the extra board. The Organization contends that under the applicable

articles of agreement governing both extra boards, Carrier is prohibited from assigning work covered by Extra Board Territory #2 to employees, here, Information Clerks, whose work is covered by Extra Board Territory #1. Carrier presents as its primary defense that, the charge it is in violation of any of the cited Extra Board Agreement Articles, is unsupported by any and all argument proffered by the Organization, as the circumstances complained of do not involve an extra assignment, vacation, or other vacancy to be filled under the provisions of the Extra Board. Instead, Carrier argues, the employees already on duty and under pay, themselves, determined how they would best meet the needs of service, which determination was accepted by supervision. Carrier avers that said voluntary work arrangement did not deprive any employee of work nor deprive any including Claimant of lost overtime opportunities. The Organization counters with the argument that since the weekend "outside" Gatemen are burdened with performing all their duties and therefore find it difficult to also cover the duties of the "inside" Gatemen as well, then, in the absence of bulletening "inside" Gatemen positions on the weekend, Carrier should cover the work in question by utilizing the applicable extra board, rather than permitting employees whose work duties fall under a different extra board, here, Information Clerks under Extra Board Territory #1, to perform duties of the "inside" Gatemen. Carrier's defense with respect to this argument is that the Organization has failed to show, by any substantive evidence, that the work of announcing and posting trains belongs exclusively to the Gateman classification.

Carrier submits that Claimant's dispute is not with its application of the Rules Agreement, but rather with his fellow employees and their mutual agreement to redistribute their work. Carrier asserts this voluntary arrangement among employees falls outside the parameters of any of the 1976 Agreement provisions and therefore not subject to further review. Additionally, Carrier submits, notwithstanding this latter assertion, the subject voluntary arrangement redistributing the work is not in violation of any Agreement provisions. The Organization counters this argument asserting Carrier has offered no evidence to substantiate that the employees voluntarily divided the work themselves, but even assuming *arguendo* this represents the truth of the matter, then Carrier acquiesced in this arrangement and by so doing it permitted, in effect, a separate bargain with employees, an action that is barred by the very existence of the collective bargaining relationship. Specifically, the Organization maintains that Carrier cannot have an understanding or make an agreement with employees that results in leaving their bulletined assignment and performing other work. In support

of this contention the Organization cites Third Division Awards 14679, 21048 and 22492.

In review of all argument asserted hereinabove, the Board concurs in Carrier's position that it is not guilty of violating the cited provisions of the Extra Board Agreement as the prevailing circumstances establish, without doubt, that there was no extra assignment, vacation, or other vacancy to be filled. Additionally, there is not sufficient evidence to support the Organization's allegation that absent the subject work arrangement, the volume of work associated with the duties of the "inside" Gateman on the weekends is so large that the work would have to be covered by calling someone from Extra Board Territory #2 to fill the position. In point of fact, the evidence before us strongly suggests that the work arrangement in question is a matter of convenience to both the Gateman and the Information Clerks rather than a matter of too much work for the "outside" Gateman to perform. Since the claim is confined to the allegation Carrier violated certain specified Extra Board Agreement Articles, we are constrained from going beyond the parameters of the claim to comment on the matter of whether Carrier, by its acquiescence, entered into a separate bargain with the employees in question when, by its own admission, it condoned the voluntary arrangement between the weekend "outside" Gateman and the Information Clerks at Boston South Station to perform the announcing and posting train duties assigned to "inside" Gatemen on the weekdays. The Board is further constrained from delving into this allegation based on a lack of information and evidence relevant to pertinent considerations such as exclusivity of the disputed work. Accordingly, we rule to deny the subject claim in its entirety.

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 13th day of August 1997.