

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32302
Docket No. CL-32831
97-3-96-3-150**

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-11207) that:

The carrier violated the current rules agreement particularly but not limited to Rule 1 Scope.

During the period around March 9, 10 and 11, 1992, the janitor at the Providence MOW base Mr. Edward Perroli was off due to a death in his family. The carrier blanked the position. However on Tuesday, March 10, 1992, the supervisor ordered Mr. Ronnie Taylor a track department employe to clean the MOW base. During the hours of 7:00 a.m. - 3:30 p.m. he cleaned the lunch room, tables and floor etc., C & S area thorough cleaning as well as the rest rooms.

Therefore, claim is made for eight hours pay at the punitive rate on behalf of Mrs. Patricia Gillery who was the senior qualified available employe willing to work the vacancy but not offered the opportunity to do so.

This claim is presented in accordance with Rules 7-B-1, 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 Janitor's position at the Providence Maintenance-of-Way (MOW) Base is held by clerical employee, Edward Perroli. On March 9, 10 and 11, 1992, Perroli was off work on Bereavement Leave (pursuant to the Compassionate Leave Rule contained in the controlling Rules Agreement, effective September 1, 1976) due to a death in his family. The Organization alleges that Carrier blanked Perroli's position on all three dates he was off work on leave, but notwithstanding having done this, Carrier, on March 10, 1992, utilized employee, Ronnie Taylor, a track department employee, to perform the janitorial duties reserved to Perroli for one entire shift. The claim alleges that Taylor, a non-TCU bargaining unit employee, performed the janitorial duties of cleaning in the Communication & Signal (C&S) area which involved the lunch room, both tables and floor and the C&S rest rooms. By so utilizing Taylor to perform Perroli's janitorial duties, the Organization asserts Claimant was deprived of a work opportunity as she was the senior qualified available TCU employee willing to work the vacancy. The subject claim seeks payment to Claimant for the eight hours worked by Taylor at the punitive rate of time and one-half.

As a primary defense against the charge it violated Rule 1, the Scope Rule of the 1976 Rules Agreement, as well as other identified Rules, by utilizing a non-TCU employee to perform the janitorial work of cleaning the Providence MOW Base, Carrier accuses the Organization of inaccurately setting forth the facts surrounding the instant dispute; specifically, Carrier asserts the following:

- Taylor performed duties of cleaning not for an entire shift of eight hours but rather for one and a half hours.
- Taylor did clean the C&S lunch room and rest rooms on the claim date in question, but the truth of the matter is that the cleaning of the C&S area did not fall within the cleaning responsibilities assigned to Perroli.

A review of the record evidence and argument asserted in its entirety fails to shed any light, let alone resolve the basic conflicts raised by Carrier in the factual background. It is clear that the Organization bears the burden of proof to establish that Carrier

violated the 1976 Rules Agreement depriving Claimant of a work opportunity and, as the first hurdle in meeting this burden it is incumbent upon the Organization to demonstrate, without doubt, that the work duties in dispute are, in fact, part of the assigned duties performed by TCU employee, Edward Perroli. However, it is clear from the record evidence before us that the Organization failed to meet this threshold hurdle in that it countered Carrier's charge of misstating the facts by mere assertion rather than the proffer of conclusive evidence. The bottom line is, that there is no substantive evidence before the Board that persuades us that the disputed work fell within the work responsibilities assigned to employee Perroli. Having failed to establish this as fact, the Organization is in no position to effectively support the further arguments it raises here such as that Carrier violated the Scope Rule or that the punitive rate sought as a remedy is the appropriate and proper relief in compensating Claimant for the asserted deprivation of work opportunity. Accordingly, the Board finds to dismiss the instant claim based on insufficiency of evidence which, in turn, resulted in the Organization's inability to meet its burden of proof.

AWARD

Claim dismissed.

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 November 1997.