

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 33178  
Docket No. CL-33858  
99-3-97-3-359

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**PARTIES TO DISPUTE:** (Transportation Communications International Union  
(National Railroad Passenger Corporation (AMTRAK))

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-11748) that:

The following claim is hereby presented to the Carrier on behalf of Claimant Richard Kweller.

(a) The Carrier violated Rules of the Agreement between Amtrak and R.R.A.C. effective July 21, 1972, as revised, particularly Rule 6, 10, 12 and other rules, when the Carrier maintains Claimant's position Ticket Clerk/Baggageperson, Symbol TCA-5, with the rest days of Sunday and Monday, and has no relief position to cover this position's relief days.

(b) Claimant now be allowed eight (8) hours punitive pay, base (sic) on the pro-rata daily rate of \$123.68 for each Sunday and Monday that this violation continues.

(d) In order to terminate this claim the Carrier must change the rest days of this position to Saturday and Sunday, or provide proper relief coverage on the rest days.

(e) The successors, if any, to the above position be considered as Claimant(s) in this claim.

(f) Claim has been 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.

At the heart of the issue in this dispute is the interpretation of Rule 12(b) of the Agreement between the Parties. Rule 12(b) reads in pertinent part as follows:

- “(1) The workweek shall be forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7).
- (2) On positions the duties of which can reasonably be met in five (5) days, the days off shall be Saturday and Sunday.
- (3) Where the nature of the work is such that employees will be needed seven (7) days per week, any two (2) consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.”

At the outset, the Carrier maintains that the claim was not filed in a timely manner. It points out that the bulletin upon which the claim is based was posted on October 3, 1995. Accordingly, the claim would have to have been filed 60 days thereafter, or by December 2, 1995, in order to be timely. The instant claim was filed on January 29, 1996. While time limits are clearly intended to expedite filing of claims, it is well accepted generally by boards of arbitration here and in other industries that the time limit begins when the employees knew or should have known of the violation at issue. In this case, the Organization has argued persuasively that it did not know of the

violation until it obtained evidence to indicate that the job in question was a five-day not a seven-day position.

The language of Rule 12 (b) is clear. When a position is one in which the work assigned is accomplished in five days, the rest days designated shall be Saturday and Sunday. The Organization points out that the Carrier's chart of relief positions does not indicate coverage for Claimant's position on his rest days of Sunday and Monday by an employee categorized as a relief position employee (TCAR). However, the Carrier has countered without refutation that the days in question are covered by an employee in position TCA-2. Carrier has also noted that on days with fewer trains (Sundays in particular) there are only four Clerks on duty instead of five or six. Absent the Organization's probative demonstration of evidence to the contrary, the Board has no basis upon which to sustain the instant claim.

**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 25th day of March 1999.