

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33394
Docket No. CL-34105
99-3-97-3-374

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11762) that:

Please consider this as a claim of the District 1089 Protective Committee on behalf of R. A. Capaldi, Seniority 12/19/79. The Carrier violated the current Rules Agreement between the National Railroad Passenger Corporation and the Transportation Communications International Union, particularly, but not limited to Rule 1 – Scope Rule.

On Monday, August 7, 1995, Tuesday, August 8, 1995, Wednesday, August 9, 1995, Tuesday, August 15, 1995, and Wednesday, August 16, 1995, the Carrier used and permitted Trackman R. Taylor to perform the duties of position JN-618, hours 11:00 a.m. - 7:30 p.m., location Providence MOW Base, incumbent E. Perolli, who was on vacation during this time period. Inasmuch as position JN-618 is a TCU Bulletined position a member of this organization from that location should have been called and used.

Therefore claim is made on behalf of R. A. Capaldi, Seniority Date December 19, 1979, for twenty (20) hours pay at the punitive rate as above. R. A. Capaldi, incumbent of position MC-606, hours 7:00 a.m. -- 3:30 p.m., was the senior qualified available employee at this location willing to work this position at the completion of his regular tour of duty.

This claim is presented in accordance with the current Rules Agreement, 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 Organization contends that Carrier violated the Scope Rule when it assigned janitorial work reserved to TCU employees to a Maintenance of Way (BMWE) employee.

The Carrier maintains that it has not violated the Agreement. It asserts that historically, at maintenance of way and other facilities system wide on Amtrak, employees of various crafts and outside contractors have been utilized to perform clean up work in work areas, lunch and locker areas.

The Board has reviewed the record. It finds that the Scope Rule of the Clerks' agreement is a "general" scope rule. Accordingly, the Organization has a considerable responsibility to demonstrate reservation of the work at issue to TCU employees. (See, for example, Third Division Award 31096 and Public Law Board No. 4304, Award No. 20.) Beyond assertions on the matter, the Organization has failed to meet the standards for demonstrating exclusive entitlement to the work in question. Accordingly, the Board has not alternative but to deny the claim.

AWARD

Claim denied.

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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 July 1999.