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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33407
Docket No. CL-34266
99-3-97-3-822

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)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11885) that:

Claim I - (NEC-1385)

This serves as a Formal Grievance concerning the Commuter Revenue Accounting Office at BackBay Station Boston, Massachusetts.

Prior to Monday, August 28, 1995, the Supervisor was made aware that one of the Clerks in the office would be on vacation, and the other off on union business. During the one week time period that the said two Clerks were away, the Supervisor proceeded to perform accounting Clerk's scope work, added rebates, posted in books, made out correction forms, and performed IBM computer work.

The Carrier violated Rules #1 Scope, #4A-1 Days Work and Overtime, and Appendix E Spare Board Agreement. This claim is for eight (8) hours at the punitive rate on behalf of Mr. P. Phillip Kelley, for the following dates: August 28, 29, 30, and 31, 1995.

The claim is valid and is presented in accordance with Rule 7-B-1.

Claim II - (NEC-1386)

This serves as a Formal Grievance concerning the Commuter Revenue Accounting Office at BackBay Station Boston, Massachusetts.

Prior to Monday, August 28, 1995, the Supervisor was made aware that one of the Clerks in the office would be on vacation, and the other off on union business. During the one week time period that the said two Clerks were away, the Supervisor proceeded to perform accounting Clerk's scope work, added rebates, posted in books, made out correction forms, and performed IBM computer work.

The Carrier violated Rules #1 Scope, #4A-1 Days Work and Overtime, and Appendix E Spare Board Agreement. This claim is for eight (8) hours at the punitive rate on behalf of Mr. David Devine, for the following dates: August 28, 29, 30, and 31, 1995.

The claim is valid and is presented in accordance with Rule 7-B-1."

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 matter at issue in this case is whether the work performed by a Supervisor on the dates stated in the claims is work reserved to employees covered by the TCU Agreement with Carrier.

The Organization has not met its burden of persuasion in this matter. That burden is discussed in full in Third Division Award 33406. Further, there is uncontroverted evidence that the Organization was aware of Supervisor's performing similar tasks at the site in question as early as 1987, filed a few claims that it did not pursue in 1990, and has not filed any claims on this subject at this site since that time.

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In light of the foregoing the instant claim must be denied.

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 July 1999.