

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33508
Docket No. MS-34009
99-3-97-3-525**

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

(Douglas Harold Hartzell

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“The National Railroad Passenger Corporation ordered other employees as well as myself to operate refrigerated Commercial Vehicles. In general, four complete transports of tobacco, alcohol, and miscellaneous freight were made per shift via Los Angeles Union Station to the Los Angeles Catering Services Department. The Carrier did violate the laws adhering in compliance with the Federal Code of Regulations, Chapter Forty-Nine (49).

Why did the National Railroad Passenger Corporation order employees to operate Commercial Vehicles, Class B, disregarding the State of California Department of Motor Vehicles’ taxed written and performance exams required in compliance with the Federal Code of Regulations, Chapter Forty-Nine (49)?

REMEDY:

The following entities are to receive the following percentage of the total Remedy amount:

Remedy Amount: \$2,117,000.00

- (1.) Torrence Court second floor Traffic Division and Room 170C only. Remedy amount allotted solely by the Honorable Municipal Judge Joshua Fredericks or the Los Angeles County Court Honorable 4th District Board Supervisor.

Remedy: 10.5%

(2.) The State of California Police Activities League

Remedy: 8%

(3.) Manhattan Beach Community Church

Remedy: 10%

(4.) H. J. Scott

Remedy: 6%

(5.) Transportation Communication Union consisting of AFL-CIO

Remedy: 35.5%

(6.) Redondo Beach Unified School District

Remedy: 30%”

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.

After thorough review of the record the Board has determined this claim is outside the authority of its jurisdiction. The Claimant is not an employee of the Carrier, the claim does not involve a Rules violation, the Claimant alleges violation(s) of federal statutes and the Claimant seeks reinstatement. The Board takes note of the following Awards:

In Third Division Award 19926 the Board stated in part:

“ . . . Claimant alleged violations of various Federal Statutes as well as a violation of the Merger Protective Agreement in this Claim. This Board is not empowered to interpret or enforce Federal Laws; its jurisdiction is limited to disputes coming under the Railway Labor Act”

Third Division Award 10963 also addressed this issue as follows:

“ . . . The RLA is a unique statute which the Congress, in its wisdom, deemed necessary to the protection of public interest “to avoid any interruption to commerce or to the operation of any Carrier growing out of any dispute between the Carrier and the Employes thereof” [RLA Sec. 2, First]. To effectuate the policy, the Act creates the National Railroad Adjustment Board as a quasi-judicial agency and vests it with certain delegated authority [RLA Sec. 3]. For the Board to exceed such authority would be ultra vires; it is not free to dispense its own brand of justice.”

The Board has no authority to grant the remedy Claimant seeks, nor does it have the authority to reinstate an employee dismissed without a possibility of return to service -- in accordance with the holding of a separate Special Board of Adjustment. Thus, the Board has no choice but to dismiss the claim.

AWARD

Claim dismissed.

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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 22nd day of September 1999.