

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33511
Docket No. CL-34370
99-3-97-3-989**

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 (AMTRAK)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11903) that:

These claims are being filed because the Carrier violated the Amtrak NEC TC Rules Agreement particularly Rules 4-D-1 which specifies 8 consecutive hours shall constitute a day's work and Rule 8-D-1 (b) which specifies a work week shall consist of 40 hours at 5 days per week at 8 hours per day.

On bid Bulletin #22 dated October 13, 1994, the Carrier advertised several positions consisting of 8½ hours work and restructured the hours and relief days of every position at Paoli Tower.

The Carrier also exhibited a cavalier attitude and showed a total disregard for the position of the General Chairman by substantially changing every position and work condition at Paoli Tower without consultation or agreement between the General Chairman and the Director of Labor Relations. This is in direct violation of Rule 10-A-1(c).

The Claimants on the second page of this letter should be compensated at the rate of \$15.84 per hour, 8 hours per day for days that they would have monthly worked had their schedules not been changed.

**Claimant W. Harmon
8 hours pay for the following days.
10/16/94
10/23/94**

10/30/94
11/06/94
11/13/94
11/20/94
11/27/94

Claimant E. Gross

8 hours pay for the following days.

10/22/94
10/29/94
11/05/94
11/12/94
11/19/94
11/26/94

Claimant V. Gibbons

8 hours pay for the following days.

10/20/94
10/27/94
11/03/94
11/10/94
11/17/94
11/24/94

Claimant F. Ross

8 hours pay for the following days.

10/21/94
10/22/94
10/28/94
10/29/94
11/04/94
11/05/94
11/11/94
11/12/94
11/18/94
11/19/94

11/25/94
11/26/94”

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 primary issue here is whether or not the Carrier violated Rule 4-D-1 when it posted Bulletin 22 of October 13, 1994. The position of the Organization is that the Agreement was violated by Bulletin 22 which advertised positions of eight and one-half hours in duration. The Organization also alleges that RULE 8-D-1 - DEFINITION OF EXPRESSIONS “POSITIONS” AND “WORK” USED IN THIS RULE and RULE 10-A-1 - CHANGES IN POSITION were also violated.

The primary Rule at issue in the claim at hand is RULE 4-D-1 -- HOURS OF SERVICE which reads:

“Except as otherwise provided in Rule 4-E-1, the regularly assigned hours, as established from time to time shall constitute a day’s work for agent positions.

Except as otherwise provided in Rule 4-E-1, eight (8) consecutive hours, exclusive of the meal hour, shall constitute a day’s work for other than agent positions at offices where only one shift is worked. At offices where more than one shift is worked, eight (8) consecutive hours, with no allowance for meals, shall constitute a day’s work for employees other than agents.”

RULE 10-A-1(c) reads as follows:

“When the duties or responsibilities of an established position, other than an agent, are substantially changed, the rate of pay and/or condition of employment may be changed for such position by agreement between the General Chairman and the Director-Labor Relations on the basis of like positions.”

The language of Rule 4-D-1 is clear. Positions other than Agent positions shall comprise “eight consecutive hours, exclusive of the meal hour” or “eight consecutive hours, with no allowance for meals.” Bulletin No. 22 lists several shifts for Block Operators at the Paoli Block Station including shifts that exceed eight hours in duration. This constitutes a violation of Rule 4-D-1 of the Agreement, unless the Director of Labor Relations and the General Chairman have conferred and agreed to the change (Rule 10-A-1(c), above). The Carrier did not do so in this case. Correspondence on the property suggests, however, that the bulletin was misstated, and that the Claimants bid on the positions in question knowing that they would receive one-half hour at time and one half when they worked the additional half hour.

The Organization has failed to show any way in which the Claimants were damaged by the mis-advertising of the positions at issue. Accordingly, there is no basis upon which to grant any form of monetary relief. However, the Board notes that the Carrier would be ill advised to continue such “bulletining errors,” and points out that it is clearly constrained to consult with the General Chairman if it enacts similar changes in the future. While the language of Rule 4-D-1 does not prohibit the Carrier from adjusting schedules to meet operational needs, Rule 10-A-1(c) mandates that Carrier consult with the General Chairman before doing so.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 5

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 22nd day of September 1999.