

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33989  
Docket No. CL-34969  
00-3-98-3-662**

**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-12159) that:**

**Claim (NEC-1482) in behalf of Storeroom Attendant Rollie Wright.**

- (a) Supervisor working job with Management said they were blanking on March 28, 1997. Employees were told by Management that on March 28, 1997, due to a holiday, there would be no deliveries and therefore no one working in the Receiving Department that day.**

**On Thursday, March 27, Andy Bly and I were discussing this incident on our 4-12 shift. Mr. Bly said he would go upstairs and check with Mr. Wayne Brody, Management, regarding this matter. Mr. Bly was told by Mr. Brody that he had personally called the trucking companies and that there would be no deliveries on March 28, Good Friday. On Friday, March 28, when I reported to work to cover my 4-12 shift the Receiving Department door was open and deliveries were being made. When I arrived at the issue window, the location of my job, I saw Mr. Russell Scott, who was working the 8-4 shift. I asked Mr. Scott who was working the Receiving Department. He informed me that he was the only Store Attendant working. He also informed me that he had seen Joe McKay, Supervisor, operating the forklift. Mr. Scott was not asked, according to him, to work in the receiving department.”**

**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 Claimant Rollie Wright was blanked from his position as Store Attendant at Amtrak's Ivy City, Washington D.C. Mechanical Facility on Good Friday, March 28, 1997. This decision was made by the Carrier after it determined truck deliveries were not expected that day thus removing the need to staff the receiving department that day. On the day of the incident three deliveries were made and were moved from the dock to the receiving area by Supervisor Joe McKay who operated a forklift to complete the task. On April 1, 1997, a Grievance Report was submitted to the Carrier that recounts the events of the day in question, but does not cite a Rule violation or a remedy sought for an alleged violation. By letter dated May 28, 1997, Manager W. T. Brody declined the claim. The Organization's appeal to the Division Manager Labor Relations B. J. Blair was also denied in a letter dated August 22, 1997. The claim subsequently progressed in the usual manner, up to and including Carrier's highest designated officer.

The Organization alleges that the Agreement was violated on March 28, 1997, when the Carrier permitted or required a non-agreement employee to do work reserved to the Clerical Craft of which the Claimant is a member. The Organization's allegation is based on the parties' Scope Rule, in particular, Rule 1(e).

**"RULE 1 - SCOPE**

- (e) It is not the intent of the Corporation to perform work which is within the scope of this Agreement. However, it is recognized that supervisors will occasionally perform such work, when necessary, under critical and/or emergency conditions, while instructing

employee, and/or when incidental to their assigned duties. Supervisors shall not be used to displace or replace employees regularly assigned to perform the task, nor will supervisors be used to negate the provisions of the overtime rules of this Agreement.”

The Organization further asserts that the Carrier has not shown critical and/or emergency conditions existed on the date in question or that employees were being instructed in the work by non-agreement people. The Organization further asserts that the Carrier has not contended the work done by a non-agreement person was incidental to their regular duties.

The Carrier asserts that the Parties’ Scope Rule is general in nature and does not grant exclusivity to members of the TCU Craft. The work in question (operation of a fork lift) was not performed exclusively by TCU employees either on a system-wide basis, or at the Amtrak’s Ivy City, Washington D.C. Mechanical Facility by custom, tradition or practice. In addition, the Carrier asserts that the 15 minutes of work in question involving the Supervisor would at most constitute a de minimus violation at best.

Finally, because the Claimant’s original claim cites no Rule violation and seeks no remedy, the Board is left with no means to resolve a potential violation; therefore, we will not address the merits. Accordingly, this claim is dismissed.

**AWARD**

Claim dismissed.

**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 28th day of March, 2000.