

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34064
Docket No. CL-34821
00-3-98-3-445

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-12074) that:

This claim is filed on behalf of Ms. Erin Zango, Clerk, GC-23-Canal Street. The Claim is for the difference in pay from her position, which was posted as a Grade #10 (\$14.50 per hour), and a Grade #8 (\$15.46 per hour), which was what her position should have been paid, commencing September 5, 1996, and for each and every day thereafter.

The Carrier violated the Agreement when it gave Ms. Zango’s position the same job description and duties as “Incumbent will be responsible for maintaining Block Operators spare board, payroll, and files. Responsible for weekly and monthly reports of NE, NRPC Form 2641 and/or other related duties as assigned by supervisors. Must be PC literate.

Rules violated are 4-E-1, 4-F-1 and 4-F-2.”

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 was a General Clerk at the Boston, Massachusetts, North Side Station MBTA commuter operations at the time the dispute arose. The Organization claims that at that time the Claimant was holding a Grade 10 rate of \$14.50 per hour as the incumbent of the General Clerk Position GC-23, but that her duties were the same as that of a Crew Dispatcher and Assignment Clerk Grade 8 at the \$15.46 per hour rate. The Organization asserts that the following Rules of the Agreement were violated, commencing September 5, 1996, when the Carrier refused to increase the Grade 10 rate of the Claimant to Grade 8. The claim was denied by the Carrier on December 5, 1996. The pertinent Rules in dispute are as follows:

“RULE 4-E-1 - PRESERVATION OF RATE

(a) Employees assigned temporarily or permanently to higher rated positions will receive the higher rates while occupying such positions; employees assigned temporarily to lower rated positions will not have their rates reduced. Extra employees will be compensated at the rate of the position to which temporarily assigned.

* * *

RULE 4-F-1 - ESTABLISHED RATES AND POSITIONS

Established rates of pay, or positions, shall not be discontinued or abolished and new ones created covering relatively the same class of work, which will have the effect of reducing rates of pay or evading the application of these rules, nor shall the transfer of rates from one position to another be permitted.

This does not apply in the case of employees paid “incumbent” rates.

RULE 4-F-2 - RATES - NEW POSITIONS

The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. When there are no positions of similar kind or class where the new position or positions are created the rates of pay shall be fixed by negotiation and agreement between the appropriate officer designated by the Corporation and the General Chairman.”

The Carrier asserts in a letter by the Director, Labor Relations, dated September 26, 1997 that an investigation it conducted revealed that the Claimant did not perform and was not responsible for the Crew Dispatcher work of calling T&E crews, thus the Claimant is not entitled to any additional pay. It further asserts that although the Claimant is required to maintain the Block Operator Spare Board as part of her duties, that function is not to be construed as higher rated crew dispatching work. Its denial letter dated May 16, 1997 clarifies that Crew Dispatchers have the responsibility of calling train and engine service personnel and that the activity of calling Extra Board employees for any vacancy, with just three towers at that location, is not significant.

In the case at hand, there is no showing in the record that the Claimant was actually doing any of the work of the Crew Dispatcher Grade 8 job description that includes crew assignment and crew calling work, which states:

“Responsible for the prompt and proper assignment of train and engine service employees involved in the operation of MBTA Commuter trains. Additional responsibilities would also include the recording, via computer based or otherwise, of those records related to crew usage and other duties as may be assigned.”

Additionally, there is no indication that if the Claimant actually did perform any of the work in question that the work would constitute anything other than a de minimus activity in the Grade 10 position to which she was assigned.

The Organization has not provided evidence that the Carrier violated the Agreement. Accordingly, this claim is denied.

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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 25th day of May, 2000.