

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35193
Docket No. CL-35311
00-3-99-3-327**

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 (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12342) that:

Claim of the System Committee of the TCU (AM-986):

The following claim is hereby presented to the Company on behalf of Claimant Jerry Paulsen.

- (a) The Carrier violated the Clerks’ Rules Agreement effective July 1, 1979, as revised, as well as, Amtrak’s C.E.O., Thomas Downs; instructions of August 8, 1997, when they refused Claimant Paulsen’s request to be allowed an “Early Out” day for September 20, 1997.**
- (b) Claimant Paulsen should now be allowed four (4) hours punitive pay, based on the pro-rata hourly rate of his position commencing September 20, 1997 and continuing for each and every day thereafter until Claimant is allowed the requested “Early-Out” day;**
- (c) This claim is presented in accordance with Rule 25 and should be allowed.”**

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.

On August 8, 1997, at 11:56 A.M., an e-mail memo was sent to select Amtrak Managers and staff in the Washington, D.C. area by Thomas Downs, the former President and CEO of Amtrak. The subject of the message, was, "EARLY OUT." The memo:

"Considering the fact that it is an unusual weather day, I would like to recognize all employees for their hard work by directing an "early out" this afternoon at 1:30 p.m. I understand that there will be employees who will be required to stay to provide adequate coverage, as well as employees whose work demands won't allow it. I would suggest that you provide these employees with similar opportunity at a future date."

Department heads who were in receipt of this Memo granted some union employees the "early out" before Amtrak's Labor Relation's office was able to clarify that the Memo did not affect union employees. Additionally, an "Early Out" Request Form was distributed to some union members who were not able to, or chose not to, take the "early out" on August 8, 1997. The Claimant's request to take his "early out" on September 20, 1997, was denied by Supervisor Tom Kirk. The Organization filed a claim on his behalf in a letter dated October 14, 1997. This claim and subsequent appeals were denied.

The Carrier's position is that no Rule of the Collective Bargaining Agreement provides for the so-called "early out" day or pay in lieu thereof, hence, the "early out" action by the Carrier has no relation to the controlling Agreement. Additionally, the Carrier contends that the Memo in question was, "clearly predicated on allowing some headquarter employees who could be spared the afternoon off with pay," as the message and copies indicated on the Memo were sent to Managers and staff in the Washington, D.C. area, which includes the Amtrak Corporate Headquarters. Further, the Carrier

alleges that, "Apparently, someone slipped this "E" Mail Message to other Amtrak locations before it could be contained." The Carrier asserts it attempted to get corrective information out clarifying that the Memo did not affect union employees before 1:30 P.M. on the day in question.

The Organization maintains that the Carrier violated the Agreement, the "Agreement being a decision made by the then CEO on August 8, 1997, to give an 'early out,' when it failed to grant a comparable 'early out' to the Claimant." The Organization asserts that since the Carrier chose to give certain employees special treatment, and Amtrak's employee representatives did not challenge the CEO's decision, "it was accepted as offered." Hence, the Organization contends that the Carrier chose to violate the rationale of the Rules Agreement.

There is no evidence in the record that the "early out" day, or payment in lieu of an "early out" day, or any specifications whatsoever regarding an "early out," is part of the existing Agreement. Hence, no Rule violation in the instant case has occurred. Additionally, the record contains no evidence that the Claimant is entitled to compensatory relief for the "early out" day he was denied.

Although the record does not support the Organization's contention that the Carrier violated any Rules of the Agreement, this kind of disparate treatment of employees, even when not contractually prohibited and precipitated merely by incompetence, should result in swift corrective action to prevent its recurrence.

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 20th day of December, 2000.