

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35448
Docket No. CL-35652
01-3-99-3-561**

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

**(Transportation Communication International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12422) that:

Please consider this as a claim of the District 1089 Protective Committee on behalf of the baggage room employees at South Station, Boston, MA (see Attachment A). The Carrier has violated the current rules agreement between the National Railroad Passenger Corporation and the Transportation Communications International Union, particularly, but not limited to Rule 5-E-1, Appendix E - Extra Board Agreement - Article 6, Appendix G - Implementing Agreement.

Effective with the change in train schedules dated May 11, 1997, the Carrier reestablished the first shift baggage room positions at South Station, Boston, MA to have hours of assignment of 7:00 a.m. to 4:00 p.m. (meal period of one hour).

The Carrier also arbitrarily included in the employees description of duties the protecting of a train (#448) which is not scheduled to arrive in Boston on the employees involved tour of duty so as to avoid the establishment of regular position(s) to cover this work. Rather than consider such options as four ten hour days as allowed for under the current agreement, the Carrier has forced overtime on the employees by extending their shift beyond the advertised quitting time by as much as five hours. Further, the Carrier has not followed the Extra Board Agreement in the allocation of regular and/or extra assignments.

Although the scheduled arrival time (4:01 p.m.) of this train (#448) would indicate that overtime would be minimal, the following is a sample of overtime forced on each employee due to the lateness of this train.

6/8/97 - 30 minutes	6/15/97 - 1 hour 45 minutes
6/9/97 - 2 hours 10 minutes	6/16/97 - 4 hours
6/10/97 - 1 hour 25 minutes	6/17/97 - 5 hours
6/11/97 - 2 hours 55 minutes	6/18/97 - 5 hours
6/12/97 - 4 hours	6/19/97 - 4 hours

Therefore claim is made for eight (8) hours at the applicable punitive rate for each employee as indicated on Attachment A for each day worked retroactive to sixty days from the receipt of this claim and continuing until said violation ceases.

This claim is presented in accordance with the current rules agreement, is in order 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.

In this case, the Organization alleges that the Carrier violated the Agreement when changes in the work hours for the first shift baggage room positions at South Station, Boston, Massachusetts, resulted in employees who were “responsible for protecting train 448,” per Bulletin 97-18, working numerous hours of overtime due to the lateness of the train from June 8, 1997, through June 19, 1997.

The Organization presented a claim to the Carrier in a letter dated July 21, 1997. This claim was denied in a letter dated September 5, 1997, by the Assistant General Manager Customer Services. A subsequent appeal to the Division Manager Labor Relations, was denied as well in a letter dated February 9, 1998.

It is the Organization's position that the Carrier violated the Agreement when it reestablished the hours of assignment of the first shift baggage room positions, BG838 and BG-849, at South Station. In the bulletin that reestablished these baggage and mail handling positions, the Carrier changed the hours of assignment to 7:00 A.M. - 4:00 P.M., with a stipulation that "employee will be responsible for protecting train 448." The Organization contends that the train's scheduled arrival time of 4:01 P.M., which falls just after the Claimant's shifts end, would indicate minimal overtime. However, the actual arrival time, and hence overtime for the dates in question, routinely exceeded the Claimant's regularly scheduled hours of work, thus "forcing" the Claimant's to work overtime. The Organization asserts that the change was made to avoid establishment of regular position(s). Key to the Organization's position is the alleged violation of the RULE 5-E(1) - 40 Hour Work Week. That provision reads as follows:

"RULE 5-E(1) - 40 HOUR WORK WEEK

NOTE: The expressions "Positions" and "Work" used in this Rule 5-E-1, refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.

- (A) The Corporation will establish, effective September 1, 1949, for all employees, subject to the exceptions contained in Article II of the Chicago Agreement of March 19, 1949, a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7); the work week may be staggered in accordance with the Corporation's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week is subject to the provisions of the Chicago Agreement of March 19, 1949."

The Carrier contends that nothing in RULE S-E(l) prohibits overtime, and that it is the right of management to schedule shifts in accordance with service requirements.

The Carrier asserts that no vacancies were made on either of the two positions made subject of this claim on the dates in question, thus, a violation of Appendix E could not have occurred in this instance as the Organization alleges. Additionally, the Carrier contends that no additional compensation is due to the employees as they received proper compensation for all work performed on the dates in question, which included straight time for their eight-hour shift and overtime when they were required to work past their assigned quitting time.

Based upon the foregoing, the Board does not find that Carrier violated the Agreement. There is no evidence in the record that the Claimants were “forced” to work overtime as the Organization alleges. There does not appear to be a violation of RULE 5 E(1) as the Organization alleges, as it addresses the 40-hour work week, but does not preclude overtime. There is also no evidence that vacancies were created in the positions or on the days in question, so the Board does not find a violation of Appendix E.

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 26th day of April, 2001.