

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35460
Docket No. CL-36203
01-3-00-3-415

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12621) that:

- (a) The Carrier violated the Clerks Rules Agreement effective July 21, 1979, ‘as **revised**, particularly Rules 1 (Scope) 7, 14, 26 and other rules, when on the December 24, 1998 holiday, they laid-in various clerical positions, then allowed and permitted non-clerical employees Transportation Manager, Ralph Fevecchio (spelling) and Station Master, Adam Newton to perform the clerical duties of the laid-in positions (perform Roadrailer Inspections), instead of allowing the Claimant to perform said duties. These violations occurred at 1:00 p.m. and 3:45 p.m., respectively, at the Albany/Rensselaer, New York Amtrak facilities;
- (b) Claimant Hunter should now be allowed eight (8) hours overtime based on the appropriate rate of her position on account of this violation;
- (c) Claimant Hunter was qualified, available, and incumbent of a position that regularly performs the duties claimed and should have been called to perform them in accordance with Rules 7 and 14;
- (d) 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 the Christmas Eve Holiday, December 24, 1998, the Carrier laid-in Claimant O. Hunter's position at Albany/Rensselaer, New York. The Claimant performed roadrail inspections as a normal duty five days per week. On this day, while the Claimant was laid-in, the Carrier allowed two Management personnel to perform the roadrail inspections normally done by the Claimant on her assignment. As a result, the Organization requests that the Claimant be paid eight hours at the punitive rate because she was not called to perform the routine work of her assignment.

The Carrier takes the position that rail inspection is not work exclusively reserved for Clerks at the Rensselaer/Albany location. It further argues that the Organization presented no evidence that a violation of any Rule actually occurred. The Organization has not carried the required burden of proof in this instance. It also argues that even if a violation of a Rule did occur, it was de minimus in nature and no compensation was due the Claimant.

The Board has reviewed the record, including all of the correspondence and documents presented on the property, and has concluded that Carrier Officials did indeed perform the task of rail inspection, the routine duties of the Claimant. The Claimant's position was blank and she was not on duty. It was a holiday. While there are many Awards in this industry involving the same or similar conditions, the more reasoned Awards have concluded that work performed on holidays is judged by the same standards as work performed on unassigned days. Essentially, these Awards conclude that incumbents are entitled to the work opportunity on holidays, since they

normally perform the work. The Claimant therefore should be compensated for the lost work opportunity. Due to the brief time spent by the Supervisor inspecting roadrails, the Board has concluded that paying the Claimant a three hour call is appropriate.

AWARD

Claim sustained in accordance with the Findings.

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 May, 2001.