

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35480
Docket No. CL-36070
01-3-00-3-228**

The Third Division consisted of the regular members and in addition Referee Andr  e Y. McKissick 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-12582) that:

- 1. The Carrier acted in an arbitrary, capricious and unfair manner, violating Rule 14 and other related rules of our Agreement, when it failed’or refused to allow K. Yarka to work an October 30, 1993 overtime assignment, and instead allowed Ms. Klotzhback-Piper an Unassigned Clerk who does not meet the typing requirement to work the assignment.**
- 2. The Carrier shall immediately compensate Claimant eight (8) hours at the Crew Assignment Clerk rate of time and one-half for the above mentioned date.”**

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 Organization alleges that the Carrier violated Rule 14 of the Agreement, and in pertinent part, reads as follows:

“Rule 14 - OVERTIME

- (a) Except as otherwise provided, timeworked in excess of eight (8) hours, exclusive of the meal period, on any workday shall be considered overtime, and paid for on the actual minute basis at time and one-half rate. . .
- (f) If overtime is necessary before or after assigned hours, employees regularly assigned to the job category at the location shall be given preference in seniority order; the same principle shall apply to working extra time on holidays. Vacancies, including vacancies on rest day relief positions not filled by (e) above, shall be filled on a day-to-day basis in seniority order by employees regularly assigned to the job category at the location and who are available. In the event that employees waive the right to overtime, the company shall direct employees in the job category at the location, in reverse seniority order, to perform the overtime and holiday work.. .
- (j) Regular assigned employees who absent themselves from their assigned position shall not be considered available for any assignment for overtime for a period of twenty-four (24) hours from the starting time of the position to which assigned.. .”

This claim involves a runaround dispute based upon; whether or not the eight (8) hour claim should be compensated on a pro-rata basis or overtime at the time and one-half rate for the loss of work on October 30, 1993.

It is the position of the Organization that the failure of the Carrier to pay the Claimant at the overtime rate was unfair, arbitrary and capricious. The Organization argues that the Claimant's loss of an overtime assignment should be fully compensated, not partially compensated at the straight-time rate, as the Carrier has done. Moreover, the Organization points out that when a senior employee is notified to perform work-outside of his regularly assigned hour, one must receive compensation at time and one-half. In sum, the Organization concludes that the Carrier's admission of a mistake in calling for a junior

employee (Klotzhback-Piper) and the payment of eight (8) hours at the straight rate to the Claimant is insufficient, as she was deprived of four (4) hours of straight-time pay.

The Carrier retorts these assertions by maintaining that the remedy of straight-time was never contested before by the Organization. It is the position of the Carrier that overtime pay is punitive and constitutes a penalty to the Carrier. Moreover, the Carrier argues that the straight-time remedy is proper and the Claimant was justly compensated for its improper utilization of a junior unassigned employee. The Carrier also points out that it is standard practice to pay the overtime rate only for the work actually performed in excess of eight hours, not for the right to perform overtime work, as the Organization urges.

The Board finds that this claim must be sustained for the following reasons. First, the total payment for the loss of an overtime assignment must be completely compensated by the utilization of the overtime rate. Here, the Carrier admits to its error of calling a junior employee by failed to justly compensate the Claimant for this oversight. Second, the Board finds that the Carrier violated Rule 14 (a) with its incomplete compensation of eight (8) hours at straight-time to the Claimant. Third, the Organization has met its burden of proof and the claim must be sustained for the aforementioned reasons, as this Board does not find that the Carrier incurred a penalty by the full repayment of the overtime claim for the four (4) additional hours.

AWARD

Claim sustained.

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.