

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35556
Docket No. MS-35392
01-3-99-3-273

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen when award was rendered.

(William J. Halstead
PARTIES TO DISPUTE: (
(New Jersey Transit Rail Operations, Inc.

STATEMENT OF CLAIM:

“Claim (A) - August 29, 1997:

- (a) The Carrier violated the New Jersey Transit Clerks Rules Agreement, particularly Rules 1, 19(f), or 19(g), 25, 28, 31 and other rules when it assigned the responsibility of notifying B of LE Engineers of no longer being medically qualified to perform service if they did not turn in their completed medical forms before 1201AM, Monday, September 1, 1997 (see attached SCAT messages), a function long-established as managerial, to Crew Caller William J. Halstead during his tour of duty on Friday, August 29, 1997.**
 - (1) It has been long-established that, the use of agreement employees to monitor agreement employees in their compliance with state and federal laws has been deemed as an unacceptable practice, and in fact, New Jersey Transit Rail Operations, Inc's Time Table, General Special Instructions C-2 and C-4 Clearly define the monitoring of this issue as a Managerial function and a compliance with state and federal law, without notice at all.**
 - (2) However, should the management of the Carrier wish to shirk its responsibility in such matters, then we have to ask that these responsibilities be added to the Crew Callers' positions in accordance with the applicable Rules (28 and 31) of our Agreement with the Carrier.**

- (b) The Organization is of the opinion that, the duties performed by Mr. Halstead on August 29, 1997 were not a normal part of his job description, and therefore, the performance of such duties were in violation of the current Rules Agreement.
- (c) The Organization now requests that claimant, William J. Halstead, be compensated an additional 8hrs pay at the overtime rate of 28.46 per hour for August 29, 1997, for the performance of duties outside the scope of his position.
- (d) This claim is presented in accordance with Rule 41 of the Agreement between the parties and should be allowed.

Claim (B) - September 3, 1997

- (a) The Carrier violated the New Jersey Transit Clerks Rules Agreement, particularly Rules 1, 19(F), or 19(g), 25, 28, 31 and other rules when it assigned the responsibility of notifying a B of LE Engineer of no longer being medically qualified to perform service if he did not have his hearing checked by the end of tour of duty Friday, September 5, 1997, (see attached SCAT messages), a function long-established as a managerial, Crew Caller William J. Halstead, during his tour of duty on Wednesday, September 3, 1997.
 - (1) it has long-established that, the use of agreement employees to monitor agreement employees and their compliance with state and federal laws has been deemed as an unacceptable practice, and in fact, New Jersey Transit Rail Operations, Inc's Time Table, General Special Instructions C-2 the C-4 clearly define the monitoring of this issue as a Managerial function and a compliance with state and federal law, without notice at all.
 - (2) However, should the management of the Carrier wish to shirk its responsibility in such matters, then we have to ask that these responsibilities be added to the Crew Callers' positions in accordance with the applicable Rules (28 and 31) of our Agreement with the Carrier.

- (b) The Organization is of the opinion that, the duties performed by Mr. Halstead on September 3, 1997 were not a normal part of his job description and therefore the performance of such duties were in violation of the current rules agreement.
- (c) The Organization now requests that claimant, William J. Halstead, be compensated an additional 8 hours pay at the overtime rate of \$28.46 per hour for September 3, 1997, for the performance of duties outside the scope of his position.
- (d) This claim is presented in accordance with Rule 41 of the Agreement between the parties 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.

Initially, the Carrier contended that the claim was not appealed to the Board in a timely fashion. The Carrier subsequently dropped its contention that the claim is not timely.

The next issue to be determined is whether the response of the Carrier to the claim, under the provisions of Rule 41 (a), complied with the requirements of the Rule. It is the contention of the Claimant that the reasons offered by the Carrier were insufficient under the provisions of the Rule. The response of the Carrier was "we have carefully reviewed this claim and we did not find any merit or rule support to substantiate this claim. Given this lack of merit together with the lack of rule support and board interpretation we did not find that we can uphold this claim. Therefore, this claim is denied."

The rationale set forth in Third Division Awards 21132 and 26541 is persuasive. In Award 21132 the Board stated: "We have considered carefully the detailed record and the many Awards cited by the parties. The principles governing disposition of this claim have been well-established therein. We find no merit in the Claimant's contention that the time limit rule, Article V was violated by the following wording in the denial decision: 'Your claim is not supported by any rule, and, therefore, is declined in its entirety.' A myriad of Awards in which we find no palpable error have upheld such a denial as sufficient and proper." In the instant case the Carrier's response was more than adequate and the timeliness issue raised by the Claimant is denied.

The primary issue to be determined is whether the Carrier violated the Rules cited by the Claimant, when it instructed the Claimant to contact Locomotive Engineers and notify them of the need to return completed medical forms to the Carrier. A careful analysis of the record indicates that the decision-making process regarding the need to contact the Engineers was solely that of the Carrier. There is no indication in the record that the requirement placed upon the Claimant to make a phone call was anything other than a function incidental to his underlying duties. The Claimant failed to sustain his burden of establishing any Rule violation and the claim is denied.

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 24th day of July, 2001.