Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35856
Docket No. CL-36315
01-3-00-3-505

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12630) that:

(a) The Carrier, acting arbitrarily and capriciously, is violating Article II, Section 1(f), of the September 6, 1991, Mediation Agreement and other related rules of the Agreement by scheduling Claimant Dale Erickson, a part-time ticket clerk at the Wolf Point, Montana, station, to work in excess of twenty-five (25) hours and in excess of five (5) days in his work week.

(b) The Carrier shall now be immediately required to consider Claimant, Dale Erickson, to be a full-time employee and to compensate him in accordance with appropriate rules which guarantee eight (8) hours per day and forty (40) hours per week compensation for regularly assigned, full-time employees.

(c) The Carrier shall, further, be required to provide Claimant with health and welfare benefits as provided to all Agreement-covered full-time employees, and to reimburse him for any amounts paid by him, on or after February 1, 1994, for medical, surgical, or dental expenses to the extent that such payments would be payable by the current insurance provided by Carrier."

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 February 2, 1994, the Organization filed a claim on behalf of the Claimant, Dale Erickson, arguing that the Carrier violated Article II, Section 1(f), of the Agreement when it required the Claimant, a part-time employee, to work a full-time schedule without being paid accordingly and offered all the protections and benefits provided by the Agreement to full-time employees. The Organization contends that the Claimant was hired as a part-time employee at the Carrier's ticket office at Wolf Point, Montana, but was at some point scheduled and assigned to work five hours a day, seven days a week as a result of another employee's discontinuation of employment. The Organization asserts that the Claimant continued to work such a schedule, covering both his position and that of the employee who left the service of the Carrier. The Organization argues that the overtime in question is not of a random or casual nature, but, in fact, the Claimant worked week after week on a seven-day schedule. The Organization requested that the Carrier furnish the time worked by the Claimant, but the Carrier refused to furnish the records in its possession, and the Organization filed this claim based on its records. The Organization claims that the excess hours the Claimant worked were not overtime on his own regular position, but of a vacancy on a Relief Agent position that the Carrier did not fill as required by the Agreement. The Organization points out that Article II, Section 1(f), of the Agreement provides that part-time employees will not be scheduled to work more than 25 hours in a workweek and will not be scheduled to work more than five days in any workweek; however, the Claimant worked in excess of 25 hours on seven days, constituting full-time employment. The Organization acknowledges that the Carrier did belatedly recognize that a full-time position was required near the end of calendar year 1996 and converted the Claimant's position to a full-time position; however, the Organization argues that the claim should be sustained up to and including December 31, 1996.

The Carrier denied the Organization's claim.

The Carrier maintains that the Carrier's use of the Claimant was necessitated by the leave of absence of a part-time Relief Agent and that the Claimant was compensated at the overtime rate each time he worked more than 25 hours. The Carrier contends that the Claimant is not considered a regularly assigned employee and is, therefore, not entitled to benefits that specifically exclude part-time employees. The Carrier asserts that the Carrier's use of the Claimant for overtime did not convert him to a full-time employee. The Carrier argues that the Agreement provides for the utilization of part-time employees in overtime situations and sets forth the rates of pay for employees working in excess of the established part-time schedule. The Carrier maintains that the use of those employees in an overtime situation does not confer upon them any special status.

The parties being unable to resolve the issues at hand, this matter came before the Board.

The Board has reviewed the procedural arguments raised by the Carrier, and we find them to be without merit.

With respect to the substantive issue, the Board has reviewed the record in this case, and we find that the Organization has met its burden of proof that the Carrier violated Article II, Section 1(f), of the September 6, 1991, Mediation Agreement when it scheduled the Claimant, Dale Erickson, a part-time Ticket Clerk at the Wolf Point, Montana, station, to work in excess of 25 hours and in excess of five days in his workweek. Therefore, the claim will be sustained.

In 1991, the parties consummated a Mediation Agreement which stated in paragraph (f) of Section 1:

> "(f) Part-time employees will not be scheduled to work more than 25 hours, or less than 15 hours, in a work week. Regularly scheduled part-time employees will receive overtime pay when they work outside of their scheduled hours. Part-time assignments will be scheduled for a minimum of 2 hours and a maximum of 8 hours in any calendar day and will not be scheduled to work more than 5 days in any work week. When part-time employees work more than 5 consecutive hours, a non-paid 30 minute meal period will be allowed during the 4th and 5th hours and the provisions of the existing meal period rules will not apply; however, employees required

to work any part of the meal period will be paid therefor, on the minute basis at the rate of time and one-half. In the event the 30 minute meal period cannot be provided, 20 minutes in which to eat will be allowed at the first opportunity without deduction in pay therefor."

The parties therefore created strict prohibitions against the Carrier assigning part-time employees to work more than 25 hours in a workweek or on more than five days in a workweek. This was agreed to because the Organization wanted to prevent the Carrier from utilizing part-time employees on work that could be a full-time position. At the same time, under the 1991 Agreement, part-time employees were not to receive health and welfare benefits provided under the current programs, nor did they receive holiday pay, sick-leave pay, or vacation pay.

As stated above, the Claimant was a part-time employee who the Carrier began using on a full-time basis and did so for a long time. Apparently, the actual records of all of his part-time work were not made available to the Organization. However, it was clear that he was used in violation of Article II, Section 1(f), of the 1991 Agreement because he was used continuously to work more than 25 hours each week. The Board agrees with the Organization that the intent of the 1991 Agreement was to make it clear that part-time employees could not be utilized to fill other positions in addition to their own. In this case, we find that the Carrier violated that clear intent. The Claimant was acting as a full-time employee, but was not getting the benefits of full-time employment as called for by the Agreement. The Carrier finally recognized the situation and near the end of calendar year 1996 converted the Claimant's position to a full-time position. That act on the part of the Carrier terminated its liability herein from the date it converted the Claimant's position.

Given the clear-cut violation of Article II, Section 1(f) of the 1991 Agreement, the Board has no choice other than to sustain the claim. With respect to the relief, the parties are ordered to get together and exchange records so that the exact number of weeks that the Claimant was assigned to work in violation of Article II, Section 1(f) can be determined and that the relief can be properly made.

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 18th day of December, 2001.