

per hour for May 28, 1998, 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.

At the time of the incident that gave rise to this case, the Claimant held a Crew Caller position headquartered at One Penn Plaza, Newark, New Jersey. On June 9, 1998, the Claimant filed a claim for eight hours pay at the overtime rate because he was directed to contact six Locomotive Engineers and notify them they were required to complete and return medical forms to the Carrier. The Claimant contends that this task was the responsibility of Management and was beyond the scope of his duties. The claim was denied. The Claimant further contends that the denial of his claim did not meet the requirements of Rule 41(a) of the parties' Agreement and the claim is payable on that basis alone.

Rule 41 - CLAIMS FOR COMPENSATION - GRIEVANCES reads, in relevant part, as follows:

"When claims or grievances have been presented in accordance with this Paragraph (a), including exception (1) and (2), and are denied, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative), in writing of the reasons for such disallowance. If not so notified, the claim or grievance will be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar cases or grievances."

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35937
Docket No. MS-36000
02-3-00-3-197

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

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

STATEMENT OF CLAIM:

- “(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 Engineers of no longer being medically qualified to perform service if they did not turn in there [sic] MD-40's by 11:59 PM on May 31, 1998, (see attached SCAT messages), a function long established as managerial, to Crew Caller, William J. Halstead, during his tour of duty on Thursday, May 28, 1998.
- (1) It has long been established that, the use of agreement employees to monitor agreement employees in there [sic] 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 circumvent 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 May 28, 1998 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, W. Halstead, be compensated an additional 8 hrs. pay at the overtime rate of \$28.46

Despite the advice of the Organization that his claims lack merit, the Claimant progressed multiple claims of the same or similar nature as the instant one. He presented the same arguments on the merits, as well as the same procedural arguments in each instance.

The Board reviewed the instant claim, as well as Third Division Awards 35555, 35556, 35557, 35558 and 35819 involving the same parties and has concluded that this claim is identical to those and should likewise be denied. In the Awards cited above the Board presented a complete and comprehensive analysis of each case. The Board can see no reason why it should repeat the same reasoning in response to the many identical cases presented by the Claimant. We therefore deny this claim.

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 20th day of February, 2002.