

per hour for February 27, 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.

In Third Division Award 35937, the Board expressed its opinion on the merits and procedural arguments presented by the Claimant in a long list of the same or similar cases. The text of that Award applies equally as well to this case.

**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.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 35938  
Docket No. MS-35999  
02-3-00-3-196

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

**PARTIES TO DISPUTE:** (William J. Halstead  
(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 12:01 AM on March 1, 1998, (see attached SCAT messages), a function long established as managerial, to Crew Caller, William J. Halstead, during his tour of duty on Friday, February 27, 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 February 27, 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