

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36846
Docket No. CL-37482
04-3-02-3-541

The Third Division consisted of the regular members and in addition Referee M. David Vaughn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the TCU (AM-1075) that:

- (a) The Carrier violated the Clerical Rules Agreement, effective July 21, 1972, as revised, particularly Rule 16 and other rules, as well as the May 18, 1999 Memorandum of Agreement (a.k.a. Extra Board Agreement) and the spirit and intent of Article 111, Section 9, of the September 2, 1994 Agreement, when it continues to hold employee J. Genovesi on a Ticket Clerk position at the Amtrak Station located in Rhinecliff, New York, and fails to properly compensate her with “additional and necessary expenses” incurred “. . . for each work day that (s)he is withheld from such assignment . . .”
- (b) Claimant was awarded an Extra Board assignment, which is headquartered at Albany/Rensselaer, NY and on a daily basis incurs “additional and necessary expenses” as a result of being held and required to travel to the Amtrak Rhinecliff, NY Station, instead of reporting to the Albany/Rensselaer, NY headquarters location;
- (c) The normal travel time and mileage allowed employees headquartered at Albany/Rensselaer, NY for traveling to and/or from the Amtrak Station at Rhinecliff, NY is \$46.23 for 134 miles round trip and 3 hours and 28 minutes travel time;
- (d) Carrier should now compensate the Claimant in the amount of \$46.23 for 134 round trip miles and three (3) hours and twenty-

eight (28) minutes, based on the appropriate Ticket Clerk rate of pay, for each date that Claimant was/is held from her assigned position and was/is required to travel away from her headquarters point to the Rhinecliff, New York location, commencing sixty (60) days retroactive from date of initial claim (March 14, 2001) and continuing for each and every day thereafter that such violation continues.

- (e) This claim has been presented in accordance with Rule 25, has merit 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.

The Claimant was working as an Extra Board Clerk at Albany/Rensselaer, New York, when the dispute arose. She is covered under the provisions of the parties' Corporate Clerical Agreement.

In June and November 2000, the Claimant successfully bid Extra Board positions headquartered in Albany/Rensselaer, New York. However, because of service requirements, the Claimant was held on a Ticket Clerk position at Rhinecliff, New York, and received \$5.00 extra per work day as required by Rule 6, paragraph (c) of the Agreement, which states as follows:

“Where it is not practicable for the Company to place an employee on bulletined position to which assigned within the time limit above described, he will be paid the higher rate of the two positions and any

additional personal expenses plus \$3.00 per day. [By Agreement dated September 2, 1994, the penalty was increased to \$5.00 per day.]”

The Organization alleges that the Carrier, while it paid the Claimant the \$5.00 per day penalty, failed to pay the Claimant the “additional personal expenses” of travel costs and time owed her – including \$46.23 for 134 round-trip miles and three hours and 28 minutes, based on her Ticket Clerk rate of pay, for every day she was held at Rhinecliff, commencing 60 days prior to the date the claim was initially filed (March 14, 2001). The Carrier acknowledges that the Claimant was held at Rhinecliff in a Ticket Clerk position because it had no other qualified Clerks to work at Rhinecliff. It contends, however, that it compensated her in accordance with the Agreement, i.e., \$5.00 extra per workday and that no additional compensation for expenses is due.

The Organization filed this claim on behalf of the Claimant which was denied by the Carrier. By letter dated September 14, 2001, the General Chairman progressed the dispute to the Director, Labor Relations. The claim was denied by the Carrier on December 10, 2001.

The Organization argues that the Carrier violated Rules 16 and 6 of the governing Agreement when the Claimant was awarded an Extra Board assignment of Ticket Clerk headquartered at Albany/Rensselaer, New York, but was required by the Carrier to cover a position in Rhinecliff, New York, a traveling distance of 134 round-trip miles and three hours and 28 minutes travel time per day, between the two locations.

The Organization further argues that Rule 16 (Road Service) Paragraph (a) provides that employees like the Claimant who are required to travel from their headquarters to an outside point for service shall be compensated for “time spent in traveling . . . from one work location to another work location in excess of one hour” [Section (1)] and shall be reimbursed for transportation expenses at the established rate per mile [Section (2)]. It contends that, because the Carrier admits the Claimant was held off her assigned position, Rule 6 required it to pay the Claimant an additional \$5.00 per day penalty and that, being kept away from her assigned position, the Claimant should also be compensated for the additional travel time and reimbursed for the mileage she incurred by having to continue to work at the position in Rhinecliff, in accordance with Rule 16.

Finally, the Organization argues that the Carrier’s contention that the claim is fatally flawed because it was not timely filed is itself a new argument not raised during

the initial handling of the claim on the property and cannot be raised at arbitration. In addition, it contends that the Carrier's violation is ongoing and that, in accordance with Rule 25, while the Claimant cannot be made whole all the way back to the date she was initially held in place, she is entitled to payment back 60 calendar days prior to the filing of the initial claim dated March 14, 2001 (or January 14, 2001) for an ongoing violation.

The Carrier argues that the claimed violation of Rules 16 and 6 is without merit. It asserts that the claim was not timely filed and, therefore, should be dismissed without consideration of the merits. It asserts that the occurrences upon which the claim is based occurred in June and November 2000 and that any claim should have been filed no later than August 26, 2000, or January 9, 2001, respectively, rather than the actual filing date of March 14, 2001.

The Carrier further argues that the Organization presented no proof that the Claimant was entitled to any actual monies under Rule 16 or what dates Rule 16 was violated. It contends that the Organization failed to provide any proof of how many days the Claimant was held and/or any receipts to support her alleged additional expenses.

The Carrier further asserts that holding the Claimant on her former position was not a punitive action on its part and points out that its right to schedule the work force in accordance with service requirements has been upheld in numerous arbitration decisions.

The Carrier argues in addition that the Organization failed to meet its burden of proof in establishing a violation and that "mere assertions" are not proof. Citing authority, the Carrier contends that, because the Organization has not submitted any proof that a violation occurred with respect to the claim, it must be denied.

Finally, the Carrier argues that the amount claimed is excessive. It asserts that, because the Organization could not show an intentional delay in releasing the Claimant to her Extra Board position, the Claimant suffered no monetary loss as a result of its actions.

The Board is persuaded based on review of the record and consideration of the arguments of the parties that the claim must be sustained. There is no dispute that the Claimant was twice awarded an Extra Board assignment (June and November 2000)

headquartered in Albany/Rensselaer, New York, but that the Carrier, because of service requirements, held her on a Ticket Clerk position at Rhinecliff, New York.

The evidence establishes that the Carrier compensated the Claimant \$5.00 per day as a penalty for keeping her away from her assigned position, thereby acknowledging, in the words of Rule 6, that "it [was] not practicable for the Company to place [Claimant] on bulletined position to which assigned within the time limit . . . described" The Carrier failed, however, to pay the Claimant "any additional personal expenses," which is also required by Rule 6. The record establishes that, as a result of being held on her former position, the Claimant's personal expenses included mileage (\$46.23 for 134 round-trip miles per day) between Albany/Rensselaer and Rhinecliff and any tolls incurred en route. The Claimant is entitled to be made whole for these denied benefits.

Personal expenses do not include compensation for travel time and are not required by Rule 6. Rule 16 (Road Service) which does provide compensation for travel time, is not applicable to the Claimant, who was neither filling a relief assignment nor regularly assigned to road service.

The Carrier contends that, since holding the Claimant was not a punitive action on its part and that Management has a right to schedule employees in accordance with service requirements, it should not be required to compensate the Claimant for exercising its right to manage the work force. The Board acknowledges the Carrier's right to assign employees, to maintain the efficiency of its operations, and to determine the methods, means, and personnel by which its operations are to be conducted. However, that right is qualified by the provisions of Rule 6, which require certain payments to employees held in exercise of management's rights.

As to the timeliness of the claim, the Carrier argues that the events triggering the violations were isolated and completed transactions which occurred in June and November 2000 and that, to be timely, any claim concerning them should have been filed no later than August 26, 2000, or January 9, 2001, respectively. Its position implies that only its failure to implement the Claimant's reassignment is at issue in the instant case. The Board is persuaded that it is the Carrier's continuing failure to compensate the Claimant for transportation expenses in accordance with Rule 6 which is challenged in the claim. The Carrier's failure was repeated from day to day with each day being a new "occurrence." Furthermore, the Board finds that the Organization filed its claim upon first notice of the violation. Therefore, while the Claimant cannot be made whole back to the date the Carrier first held her in place

(June or November 2000) the Board holds that she is entitled, in accordance with Rule 25, to payment back to January 14, 2001, or 60 calendar days prior to the filing of the claim.

The claim is sustained in accordance with the aforementioned reasoning. The Carrier violated Rule 6 of the governing Agreement by failing to compensate the Claimant for expenses incurred as a result of being held on her position. The Carrier shall review its records and, if it has not previously done so, shall pay the Claimant \$46.23 per day plus tolls, if any, for each day she was held and actually worked at the Rhinecliff, New York, location, retroactive to January 14, 2001.

AWARD

Claim sustained in accordance with the Findings.

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 28th day of January 2004.