

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36995
Docket No. CL-37534
04-3-02-3-590

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis 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 Organization (GL-12929) that:

Carrier violated the Clerks Rules Agreement on Saturday, February 3, 2001, Saturday, February 10, 2001 and Sunday, February 11, 2001, when it used Supervisors from Station Service and Management Personnel from the Product Line Division to perform duties solely designated to the Clerks craft.

Carrier shall now compensate the incumbent of the five-day assignment (Tim O'Brien) twenty-four hours pay (24 hours) at the time and one-half rate of a Gate Position \$17.02 per hour for Saturdays, February 3 and 10, and Sunday, February 11, 2001, which he would have received had Carrier properly utilized its work force.”

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.

Claimant Tim O'Brien is employed by the Carrier as a Gateman at Carrier's South Station in Boston, Massachusetts. He is assigned from 6:00 A.M. to 3:00 P.M., Monday through Friday, with Saturday and Sunday as rest days.

The record reveals that on Saturday, February 3, and Saturday and Sunday, February 10 and 11, 2001, the Carrier used Supervisors and other Management personnel to assist passengers in loading the train leaving South Station.

The Organization contends that on the three days at issue, Supervisors and other Management personnel essentially worked as Gatemen performing duties normally performed by Clerks, assisting passengers on and off trains in South Station. It argues that these activities violated the Scope Rule of the parties' Agreement, specifically:

"Rule - SCOPE

(e) It is not the intent of the Corporation to have supervisors perform work which is within the scope of this Agreement. However, it is recognized that supervisors will occasionally perform such work, when necessary, under critical and/or emergency conditions, while instructing employees, and/or when incidental to their assigned duties. Supervisors shall not be used to displace or replace employees regularly assigned to perform the task, nor will supervisors be used to negate the provisions of the overtime rules of this Agreement."
(Emphasis added)

The Carrier, on the other hand, argues that the Organization has not carried its burden of proof in this case. It has not demonstrated that the work performed on the days in question was work accruing exclusively to Clerks. It cited many cases supporting its position on the Scope Rule and the exclusivity issue. It requests that the Board deny the claim.

The Board reviewed the record in detail. As a result of that review, it has concluded that the Carrier did not use Extra Board employees or regularly assigned Gatemen to cover the 6:00 A.M. to 3:00 P.M. Gateman position at South Station on February 3, 10, and 11, 2001. It had the required work normally performed by a Gateman, a contract employee, performed by a Supervisor or other non-contract Management personnel.

The Board concluded that the Carrier covered a Gateman's position on the days in question with a non-Agreement Supervisor or Management employee. Based upon the unique facts of this dispute it is determined that the Claimant was denied work opportunities.

In keeping with the concept that claims of this nature, if paid, should be paid on a straight-time basis, the claim is sustained for 24 hours at the straight-time rate.

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 18th day of May 2004.