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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37029
Docket No. CL-37727
04-3-03-3-50

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-12960)
that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement on June 3, 2001 and June 17, 2001, when it diverted Claimant, J. Charles from her regular assignment of accounting clerk, at NY Penn Station, NY, NY, Ticket Office, Symbol No. TC/TAC-5, hours various to sell tickets at the ticket windows.

Claimant J. Charles now be allowed an additional eight (8) hours at the pro-rata rate for each and every work day thereafter of these violations as accounting clerk on account of these violations until such time Claimant has been allowed the pro-rata rate and until such time the Carrier changes the duties of the work to accounting each and every work day, back to the original takeover agreement calls for in 1976.

The Organization has had to file several continuous claims on account of the Carrier's continued: diversion of account clerk J. Charles being taken off her regularly assignment-not to mention the preponderance of her duties as defined are (Accounting Clerk) work to sell tickets (Scope Rule 1 Paragraph (h)), the Organization has had to keep asking for an (alleged) agreement that the Carriers kept referring to in its self serving denials of those violations in allowing

the said position to be created and then allowed the duties to be other than those initially taken over by Amtrak in 1976 (Referring to Appendix H - Paragraph (D) Article IV to be performed.) No agreement has existed.

The Organization filed a claim for a violation on November 23, 2000, on behalf of Claimant Charles. The Organization again requested such agreement to be produced, payment be allowed for eight (8) hours due to the diversion, the duties be changed back to accounting, and the duties only be that of an accounting clerk (the preponderance of the work performed), and the clerk be allowed eight (8) hours for each and every work day thereafter of the violation until such violation ceased. The claim was presented in accordance with the off corridor Clerks Rules Agreement, Rule 25.

The claim outlawed, the Carrier sent a letter to the Organization's Local Representative dated February 13, 2001, admitting such violation (as attached). The Carrier indicated that Claimant would be allowed, eight (8) hours at the pro-rata rate. The Claimant was only paid for four (4) hours. The Carrier has not acknowledged the terms of the outlaw rule, and allowed the claim to be presented as it was presented.

In the month of May of 2001, the Carrier finally produced such alleged agreement as it initially had said it had. As attached one will find that such (self serving) agreement that the Carrier has been relying on, is nothing more than an inter-office memo, that the Organization has never received a copy of nor made aware that such violations have been occurring until such Claimants made the Organization aware. Such inter-office memo clearly shows that there is no CC to Organization, particularly the Organization's (General Chairman).

The Carrier is in violation but not limited to:

**Rule 4-C-1
Rule 1, Scope Paragraph H
The Extra List Agreement (Appendix E)
Rule 4-F-2/1
Rule 5-E-1
Appendix H (Paragraph D) Article IV
Rule 25, Off-Corridor-Grievances
And other Rules**

This claim has been presented in accordance with Rule 7-B-1 of the off-Corridor Clerks Rules Agreement, Rule 25 and should be allowed and accepted as presented."

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 J. Charles is a Ticket Clerk/Ticket Accounting Clerk at Penn Station, New York City. Her job description reads as follows:

"Description of Duties: Must be a qualified Ticket Clerk in order to properly audit ticket agents tours by verifying credits and debits. Tabulate redeemed and exchanged tickets, consolidate agents 920's and prepare station 920's, maintain an accurate record of agents

overages and shortages, prepare and update office ledger, prepare and type various reports to be forwarded to the appropriate Amtrak accounting offices, prepare discrepancy notices as they apply to ticket agents errors. Must have a thorough understanding of ticket accounting procedures and be familiar with all types of Amtrak and Non-Amtrak tickets. Employees must conform to N.R.P.C. "Rules of Conduct" and prescribed code of dress. Employees will personally wait on customers and sell tickets when the workload demands. A high school education with two (2) years of college or business equivalent is preferred."

On June 3, and 17, 2001, the Claimant was assigned to sell tickets at the Penn Station Ticket Office. The Organization characterized the assignment to sell tickets as a diversion from her regular assignment of Account Clerk to a Ticket Clerk. The Organization cited numerous Rules that were violated by the Carrier. It essentially argues that the Carrier has no right to handle the Claimant in this manner and requests penalty pay as a remedy in each instance.

The Board reviewed the record with an eye to discovering how the facts of this case are substantially different from those with which the Board was presented in Third Division Award 36788. The Board denied that claim. The Board finds no substantial difference in this case.

Third Division Award 36788 involves identically the same parties, the same Claimant, the same situation of assigning the Claimant to a Ticket Sellers' position, and the same rejection of the claim on the property. The Board can find no basis in this record to do anything other than deny this claim. As the Board pointed out in Award 36788, the description duties of an Account Clerk clearly state that the employee will be "required to personally wait on Customers and sell tickets when the workload demands." Assigning the Claimant to sell tickets on an intermittent basis when the workload requires it is not a diversion from her basic position, but an assignment under the terms of her position.

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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 18th day of May 2004.