

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39375
Docket No. CL-39608
08-3-NRAB-00003-060404
(06-3-404)

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

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

STATEMENT OF CLAIM:

“Claim of the General Committee that (GL-13152):

- (1) The Carrier acted in an unfair manner violating the Memorandum of Understanding between the Parties that established four (4) day ten (10) hours workweek at the Miami, FL. Crew base. Rules 6, 11, 14 and other related rules of the Agreement, when on November 1, 2004 the Carrier abolished the Claimant's Crew Assignment Statistical Clerk Positions that were established by this Memorandum of Understanding. The Carrier cancelled the Agreement without first serving the Organization proper notice as required in the last paragraph of the Agreement.**
- (2) The Carrier shall now be required to compensate each Claimant identified herein, forty eight (48) hours at the Crew Assignment Clerk rate of time and one-half. This remedy takes into account the cancellation conference that was held on December 2, 2004 and the ten days following the conference. The compensation consists of eight (8) hours at the overtime rate of pay for each week each Claimant was required to work a five (5) day work week until the Carrier served proper notice to the Organization of its intent to cancel the Agreement.**
- (3) The Carrier shall also be required to reestablish the positions identified in the Memorandum of Understanding. If it is the company's desire to abolish the positions and change them to five (5) eight (8) hours workweek positions, then the Carrier may do so, after proper notice is given to the affected employees.**

- (4) The Carrier may not establish these jobs as new slash positions consisting of two separate job categories of Crew Assignment and Statistical Clerk, unless they do so by Agreement.”

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 facts of the instant case do not appear to be in dispute. On October 20, 2004, the Manager of the Miami Crew Base, G. Mauck, published a bulletin abolishing four Crew Assignment/Statistical Clerk positions. The abolished positions had been scheduled to work four days per week, ten hours per day. The same bulletin posted four new Crew Assignment/Statistical Clerk positions scheduled to work five days per week, eight hours per day. Changes in coverage requirements precipitated said changes. The affected employees advised Mauck that a local agreement existed between the Organization and the Carrier establishing that the abolished shifts could be cancelled only after a conference between the parties, followed by 15 days' notice, and that such notice was not provided. Pursuant to that discussion, on December 27, 2004, TCU Vice General Chairman R. Kloos filed the instant claim.

The Organization contends that the Carrier violated the Agreement when it did not give proper notice to the Organization. The Organization requests that each of the four Claimants be compensated for 48 hours at the Crew Assignment Clerk rate of time and one-half. The compensation consists of eight hours at the overtime rate of pay for each week that each Claimant was required to work a five-day workweek until the Carrier served proper notice to the Organization of its intent to cancel the Agreement. In addition, the Organization requests that the Carrier reestablish the positions identified in the Memorandum of Understanding. Finally, the Organization requested

that the Carrier may not establish these jobs as new slash positions unless done so by Agreement.

Conversely, the Carrier acknowledges its failure to notify the Organization; however, the error was without malice. Immediately upon becoming aware of its error, the Carrier took steps to correct said error. In addition, the Carrier reminds the parties that the conference to notify the Organization took place on December 2, well before the claim was filed on December 27, 2004. The Carrier contends that the remedy requested by the Organization is punitive and excessive and requests that the claim be denied. In addition, the Carrier contends that all Claimants have been fully compensated for services rendered during the period in question.

After a review of the evidence and the positions of the parties, the Board finds that the Organization has been able to meet its burden of proof regarding the question of the Carrier's failure to provide proper notice of the abolishment of the above-mentioned positions. As a remedy, the Board determined that each of the four Claimants shall be compensated at the rate of 16 hours of straight time for the error. Therefore, the claim is sustained in accordance with the findings.

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 8th day of December 2008.