

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31087  
Docket No. CL-30960  
95-3-92-3-895

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of TCU (GL-10893) that:

- (a) The Carrier violated the Clerks' Rules Agreement effective July 21, 1972 as revised, particularly Rules 7, 14 and other rules when it diverted Claimant Kweller from his regular position of Commissary Clerk, Symbol CC-2, rate of pay \$95.51, hours 3:00 pm to 12:00 midnight, location Commissary, Rensselaer, NY, commencing April 23, 1991 and required him to perform work of TPMS Clerk, on a daily basis since then.
- (b) Claimant Kweller now be allowed an additional eight (8) hours pay at the pro-rata rate of \$99.01 per day, commencing April 23, 1991 and continuing for each and every workday thereonafter, on account of this violation.
- (d) This claim has been presented in accordance with Rule 25 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 waived right of appearance at hearing thereon.

In this claim, the Organization contends that Carrier violated Rules 7, 11 and 14 of the Agreement when Claimant was diverted from his regularly assigned Commissary Clerk position and required to perform work of a higher rated Train Provisioning Management Clerk TPMS. It argues that under Rule 11, an employee assigned to a higher rated position is to receive no less than that higher rate as compensation while occupying such position.

Therefore, the Organization insists that since Carrier failed to pay Claimant the higher rate of pay, Claimant should be allowed an additional eight hours pay at the pro-rata rate of the Train Provisioning Management Clerk.

Carrier argues that it did not violate the Agreement. It asserts that Rule 7, which governs the filling of vacancies which are 30 calendar days or less in duration, does not apply here. Carrier maintains that the work of entering data from commissary invoices into a computerized system in connection with Claimant's other commissary clerical duties cannot be considered a short vacancy.

In addition, Carrier submits that the Organization did not present any evidence that would indicate that Claimant lost any compensation. It points out that Claimant was compensated for each day that he worked his regular assignment of Commissary Clerk. Accordingly, for these reasons, Carrier asks that the claim be denied.

After a review of the record evidence, we conclude that the claim must be sustained, in part. The evidence indicates that Claimant performed the TPMS function on various days. On those dates, he is entitled to be compensated as follows. Claimant is to be paid the difference between the rates of pay for the two positions on those days when he performed the TPMS function one hour or more. If Claimant performed the TPMS function less than one hour on any date, he will not be compensated the difference between the rates of pay.

The parties are directed to verify the amount of time Claimant spent performing the TPMS function.

Accordingly, and for the foregoing reasons, the claim is sustained, in part.

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 1st day of September 1995.