

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31581
Docket No. MS-32386
96-3-95-3-260

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(Deletha P. Jenkins

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation

(AMTRAK)

STATEMENT OF CLAIM:

"The Carrier violated the Amtrak-Northeast Corridor Clerk's Rules Agreement, particularly Rule 3-C-2 (Assignment of Work), Section (a) which reads: "When a position covered by this Agreement is abolished, the work previously assigned to such position which remains to be performed will be assigned in accordance with the following:

(1) To another position or other positions covered by this Agreement when such other position or other positions remain in existence, at the location where the work of the abolished position is to be performed.

(2) In the event no position under this Agreement exists at the location where the work of the abolished position or positions is to be performed, then it may be performed by an Agent, Yard Master, Foreman, or other supervisory employee provided that less than four (4) hours work per day of the abolished position or positions remains to be performed..."

(B) The Carrier violated the Amtrak-Northeast Corridor Clerks' Rules Agreement Rule 1 "Scope" Section (E) which reads: "It is not the intent of the Corporation to have supervisors perform work which is within the scope of this Agreement...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."

Mr. Hector Frias, Manager - Customer Services, abolished the Extra Crew Assignment Clerk position formerly held by Deletha Jenkins, qualified Crew Assignment Clerk, effective June 27, 1994. On June 27, 1994, Crew Base Supervisors Patricia Baylor, Thomas Fant and Ed Morris, began performing of the Extra Board Crew Assignment Clerk position on an eight hour, and many times, sixteen hour basis. Some of the duties performed were: Preparing OBS daily time sheets and xerox copies, distributing paychecks to OBS employees, preparing daily running boards, completed vacation time sheets and corrected payroll information, verified employee staffing via Crew Management Center, turned monthly scheduling boards and placed employee's materials (packets) out in the lobby area. A memo dated May 13, 1994 from Mr. Frias entitled "Distribution of Crew Base Functions" which clearly shows that the primary responsibility and persons responsibility responsible for daily staffing sheets, maintaining extra packets, paychecks distribution and discrepancies are all listed beside the names of E. Salmon, qualified Crew Assignment Clerk and D. Jenkins, qualified former Crew Assignment Clerk Extra, not the Crew Base Supervisors.

Furthermore, it is alleged by Mr. Frias that portions of this work was performed by Pat. Jackson. Clearly, Mr. Frias's memo states differently as it outlines Ms. Jackson's duties as ordering uniforms, on board working tools, monitoring inventory, ordering replacements and tool inventory. Although Ms. Jackson has the title of Crew Assignment Clerk, she has never performed any Crew Assignment Clerk duties nor is she qualified for the position even though she has always received the Crew Assignment Clerk rate of pay.

Ms. Esta' Salmon-Kaaman, qualified Crew Assignment Clerk, worked the shift of Monday and Tuesday 11 a.m. to 7 p.m., Wednesday thru Friday 7 a.m. to 3 p.m., relief days Saturday and Sunday. Ms. Deletha Jenkins, former qualified Crew Assignment Clerk, worked the shift of Wednesday thru Friday 1 p.m. to 8:30 p.m., Saturday and Sunday 12:30 p.m. to 8 p.m. with the relief days of Monday and Tuesday. There was no relief clerk for these two employees. In accordance with the Clerical Agreement of TCU, during Ms. Salmon-Kaaman's absence, Ms. Jenkins, Extra Crew Assignment Clerk, should have absorbed any and all overtime for the

periods of July 4th to and including July 10, 1994 (Ms. Salmon-Kaaman on vacation) and August 24, 1994 (Ms. Salmon-Kaaman marked off her shift).

During this time, supervisor staff performed all the duties the Crew Assignment Clerk for more than the four (4) hours stipulated in the Agreement.

After a Claim and Grievance was filed with Mr. Frias and Mr. Jackson, the position of Extra Crew Assignment Clerk was placed in Bulletin 94-35 and awarded to V.D. Parker in bulletin of 94-36. Ms. Parker began working in this position on September 14, 1994.

I am, therefore, requesting that Ms. Jenkins is compensated from the date of the abolishment (June 27, 1994) to and including September 14, 1994. Additionally, that Ms. Jenkins receive compensation at the overtime rate for the period of July 4 thru July 8, 1994 and August 24, 1994.

After the appeal denial by Mr. Hector Frias on September 14, 1994, this claim was filed with Ms. B. J. Blair, Division Manager of Labor Relations. On December 15, 1994, this claim was denied. The grievance was filed with Mr. L. D. Miller, Corporate Manager Labor Relations. On March 23, 1995, the claim was denied."

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.

The crux of this dispute is the Carrier's alleged violation of the Agreement in abolishing the Extra Crew assignment Clerk position held by Claimant on June 27, 1994 and simultaneously assigning the duties of that position to Crew Base Supervisors Patricia Baylor, Thomas Fant and Ed Morris instead of to another position covered by the Agreement. As evidence of the asserted violation, the Organization points to the Memo dated May 13, 1994 in which Hector Frias, Manager-Customer Service, lists the primary duties of the position in question as precisely those undertaken by the above Crew Base Supervisors after Claimants position was abolished.

The Carrier asserts that the claim is procedurally defective in that it was not discussed in final appeal conference as required by Rule 7-B-1. The Carrier further stresses that, on its merits, the work claimed is not reserved exclusively for crew assignment clerks or other TCU-represented employees; that the evidence as to who completed certain functions is deficient; and that the Organization in fact has conceded that Clerk Jackson should have and did perform this work in the absence of Clerk Salmon-Kaaman.

The Board finds, following a review of this record and analysis of the relevant Agreement provisions, that the Carrier's position must be sustained. The evidence indicates that the Claimant initiated her complaints on August 24 and September 1, 1994. Responses to both claims were issued by Mr. Frias on September 14, 1994. On September 30, 1994, the Claimant took appeal to Division Manager Labor Relations B. J. Blair.

Conference was held on October 20, 1994, and both claims were denied on December 15, 1994. By letter of December 20, 1994, Claimant appealed her case to Director of Labor Relations Miller, subsequently indicating on March 13, 1995, that she did not desire an appeal conference. The claims were then denied by Miller on March 23, 1995, and on May 25, 1995, the Claimant filed her lengthy "Full Statement of Claim" with the Board.

The Carrier has persuasively demonstrated that this claim is expressly grounded on facts never raised or discussed in conference between the parties. After expressly waiving her right to a conference discussion with Director of Labor Relations Miller, the Claimant progressed her Statement of Claim to the Board in a manner expanded to include significant additional detail neither encompassed in the original claim nor discussed during handling on the property. This Board has previously rejected on

numerous occasions similar attempts to depart from or expand upon claims presented on the property. Having been presented with well-established precedents of this Board disfavoring such action, we conclude Claimant's petition to this Board must likewise be dismissed.

AWARD

Claim dismissed.

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 29th day of August 1996.