

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31585  
Docket No. CL-32477  
96-3-95-3-345**

**The Third Division consisted of the regular members and in addition referee James E. Conway 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-11153) that:**

**The following claim is hereby presented to the Company on behalf of Claimants R. Kweiler, S. Leonardo and/or the two most senior clerical employees forced into an unassigned status as a result of the following violation.**

- (a) The Carrier violated the Clerks' Rules Agreement effective July 21, 1972, as revised, particularly Rules 1 (Scope), 7, 10, 14 and other rules, when on October 31, 1993 and November 1, 1993, it abolished both Claimant Kweiler's and Leonardo's Ticket Clerk positions, located at Amsterdam, NY and immediately entered into a private contract with an individual named Arthur Reed, a non-clerical/non-Amtrak person, to perform clerical duties, which were previously assigned to the abolished positions, on a continual basis.**
- (b) That two of the above Claimants should each be allowed eight (8) hours pay based on the pro-rata ticket clerk rate, commencing November 1, 1993 and continuing for each and everyday thereonafter, until this violation is corrected.**
- (c) That in order to terminate this claim, said clerical duties must be returned to employees covered by the Clerical Agreement.**
- (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.

At close of business on November 1, 1993, Carrier ceased all ticket counter operations at its Amsterdam, NY, station (and others not relevant to this dispute), and thereafter engaged a private contractor to serve as "caretaker" at that location. The undisputed record evidence indicates that the caretaker's assigned duties were to unlock the building for passenger access twice each afternoon and to perform incidental cleaning services. The two Claimants, incumbent Ticket Clerks at Amsterdam, had been served notice by the Carrier on October 21, 1993, that their positions would be abolished with the unstaffing of the facility ten days hence. The record reveals that both Claimants exercised their seniority to other positions on the system without monetary loss.

The Carrier asserts, and the Organization does not deny, that "no less than 82" other Amtrak stations had been previously converted to caretaker-only operations over the past two decades, and points to a number of Awards holding that such actions do not violate the Agreement. The Parties' perceptions differ, however, as to the exact nature, volume and significance of the work performed by the caretaker retained at Amsterdam. The Organization argues that some of the same functions that were previously performed by Clerks are now being done solely by the caretaker, particularly opening and closing the station, cleaning the premises, and handling passenger baggage. The Carrier before the Board notes that the caretaker does *not* perform ticketing functions, nor any other work reserved exclusively to TCU-represented employees. It takes further exception to the Organization's attempt to introduce new evidence and argument at the Board level regarding the handling of baggage, certain documentation relating to commissary orders, and various newspaper articles.

After carefully reviewing the arguments and record evidence, this Board concludes that the Carrier did not violate the Agreement on the facts presented, and denies the claim for the following reasons.

This Board firmly agrees with the Organization's contention that a removal of work covered by the Agreement, and subsequent reassignment to non-contract personnel, normally constitutes a violation of Rule 1 of the Agreement. It is, however, well established by the Awards of this Division that the Carrier's prerogative to blank a position is substantially unfettered -provided the duties inherent in the position are not subcontracted to uncovered employees.

It is equally clear that the Organization has the burden of demonstrating by probative evidence that the Carrier's action involves the wrongful transfer of work that belongs solely to its members. That burden is carried in the first place by demonstrating that the terms of the Agreement exclusively reserve the work in question to the covered employees, with ambiguities resolved by examining issues such as past practice and system-wide application of terms by the parties.

In this instance, an examination of the Scope Rule makes it clear that it is general in nature, and does not require or guarantee that the work in question be performed by Ticket Clerks to the exclusion of all others. That construction of Rule 1 is buttressed by a number of Awards on the property cited by the Carrier which address similar fact patterns. On this record, the Organization has failed to demonstrate that the opening and closing of stations, or the performance of janitorial services belongs solely to the craft represented by the Claimants. With respect to the phoning of commissary orders by subcontractors, the same general analysis, in the view of this Board, should apply. As to the alleged handling of baggage by caretakers, we find the Carrier's objections on procedural grounds to have merit, as evidence relating to those allegations was not presented on the property.

For the reasons stated above, the claim is denied.

### **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 29th day of August 1996.**