

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31587
Docket No. CL-32489
96-3-95-3-361**

The Third Division consisted of the regular members and in addition referee James E. Conway 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 the Organization (GL-11155) that:

(a) The Carrier violated the Clerks Rules Agreement effective July 21, 1972, as revised, particularly Rules 7, 14 and other rules, when it failed to call and work Claimant Nesel at Rensselaer, NY, on October 30, 1993, and instead assigned and permitted Clerk Cathy Welch to work seven (7) hours overtime to perform duties normally assigned to Claimant Nesel's position.

(b) Claimant Nesel should now be allowed eight (8) hours punitive pay based on the appropriate hourly rate for October 30, 1993, on account of this violation.

(c) Claimant was the incumbent to which the duties perform are normally assigned, qualified, available and should have been called and worked in accordance with Rules 7 and 14.

(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.

The record reveals that at the time this claim arose, Claimant held a Clerk Typist/Statistical Clerk position at Albany/Rensselaer, NY, with hours of 3:30 PM - Midnight. Her days of rest are not specified. Claimant alleges that certain clerical work on the On-Time Performance Sheet was performed by a senior clerk over a period of seven hours on an overtime basis on October 30, apparently a Saturday. The record does not indicate specifically what duties either the Claimant or the senior employee normally perform in their respective positions.

The Organization contends that the disputed OTP work was normally assigned to the Claimant's Statistical Clerk position. As in two companion cases on which our Awards 31582 and 31588 are based, the Organization argues that Rule 14 (e) controls here, and requires that since the Claimant was the regularly assigned employee responsible and available for the disputed work, she should have been called in for the overtime. Similarly, the Carrier responds that the work done by the senior Secretary on October 30 was not work normally done by the Claimant; that the senior employee is regularly assigned to a Secretary position Monday through Friday; and that the work she did on the date in question consisted of "various clerical duties" necessary to clear up a backlog at her desk. With respect to the unspecified volume of work she did preparing On-Time Performance reports, the Carrier argues that such work does not accrue exclusively to the Claimant's position. Finally, it urges that, in any event, no evidence was submitted that the senior employee performed such work, nor has she established that she was even qualified for the work in question.

Both parties rely on essentially the same evidence and arguments advanced in the claims that were the basis of our Awards on the same property cited above. In those cases, this Board found that the Claimant had cited no express Rule violated by the challenged overtime assignment. In this case, the same results obtain. In sum, the long-established burden of proof considerations familiar to the parties and frequently recited in the Awards of this Board require that the party asserting the claim has the burden of persuasion and must present sufficient evidence to justify a finding in his favor. On the record here, laden with assertions and conclusions only, all that was said in the above Awards applies and is controlling here.

The Board finds that, based upon an analysis of the relevant Rules and the evidence and arguments of the parties, this Claim must be denied.

AWARD

Claim denied.

ORDER

The 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.