

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 31588  
Docket No. CL-32490  
96-3-95-3-362

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-11156) that:

**I. The following claim is hereby presented to the Company in behalf of Claimant A. Nesel.**

- (a) The Carrier violated the Clerks' Rules Agreement effective July 21, 1972, as revised, particularly Rules 1 (Scope), 7, 14 and other rules, when on October 31, 1993, it allowed and permitted non-agreement employee Robert Ragland to perform clerical duties of "working the OTP sheet" instead of calling and working Claimant Nesel.**
- (b) Claimant Nesel should now be allowed eight (8) hours punitive pay based on the appropriate hourly rate for October 31, 1993 on account of this violation.**
- (c) Claimant was 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.**

**II. The following claim is hereby presented to the Company in behalf of Claimant A. Nesel.**

- (a) The Carrier violated the Clerks' Rules Agreement effective July 21, 1972, as revised, particularly Rules 1 (Scope), 7, 14 and other rules, when on October 30, 1993, it allowed and permitted non-agreement employee Walt Forsythe to perform clerical duties of "working the OTP sheet" instead of calling and working Claimant Nesel.**

- (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 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.

This case involves the same parties, the same work, the same location and the same issues as were the subject of our Awards 31582 and 31587. In those dockets, claims were asserted that the performance of work on OTP sheets by a Senior Clerk and a junior Clerk Typist, respectively, constituted violations of the rules cited above. Here the claim is that two non-agreement employees violated the same rules in the same manner on the last two days of October 1993 when they worked on OTP sheets. (The claim that focuses on the work accomplished by Mr. Ragland on October 30 overlaps the claim addressed by Award 31582, in which a senior Clerk assigned to a secretarial position is alleged to have worked seven hours of overtime on OTP sheets on that same date.)

As this Board held in the above two Awards, and for the same reasons expressed therein at somewhat greater length, we find here that the Organization has failed to present sufficient evidence either that the Scope Rule clearly assigns the work in

question to the Claimant's position, or that the parties have so construed and administered that rule by historically limiting the performance of that work to employees incumbent in the Claimant's position, to the exclusion of others.

The Board finds that 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.**