

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31709
Docket No. CL-32163
96-3-94-3-564**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 TCU (NEC-1192) (GL-11106) that:

In behalf of TPM Clerk Brenda J. Brown that:

a) The Carrier violated the Rules Agreement effective September 1, 1976, as amended and revised, particularly Rules 4-A-1, 4-C-1, Appendix E - the Extra List and others when on the dates of November 17 and 20, 1992, Commissary Secretary C. Williams had her regular duties suspended and was used to handle credit error notices.

(b) Claimant B. Brown now be allowed (8) hours overtime for each date a total of 16 hours overtime.

(c) These duties are advertised duties of E. Taylor and also TPMS Clerks and should be performed by them.

(d) Claim filed in accordance with Rule 7-B-1 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 were given due notice of hearing thereon.

At the time this dispute arose, Claimant was a Train Provision Managing System ("TPMS") Clerk and C. Williams was the Secretary to Head of Commissary, G. White. Claimant and Williams worked in different departments.

On November 17 and 20, 1992 Williams typed certain information onto a credit error notice form. The job advertisement of Lead Accounting Clerk E. Taylor stated that the Lead TPMS Clerk was "... responsible for typing debit/credit errors." The Organization asserts that in the absence of Lead Accounting Clerk Taylor, the work performed by Williams should have been offered to Claimant as the TPMS Clerk.

The Organization argues that Williams suspended her work to handle credit error notices, which work should have been performed by the TPMS Clerk, in violation of Rules 4-A-1, 4-C-1 and Appendix E and seeks eight hours overtime for each date Williams performed the work. The Carrier argues that on the dates in the claim the work performed by Williams was not TPMS functions; Williams neither calculated nor determined errors; errors were determined by another TPMS Clerk, J. Vassor; Williams merely typed the information onto a credit error notice form; the total work performed amounted to three hours over both dates; and Claimant was fully employed on both the claim dates and thus suffered no loss of earnings.

Rule 4-A-1 is the eight hour day Rule. Rule 4-C-1 states that "Employees will not be required to suspend work during regular hours to absorb overtime. Appendix E states that regular and extra work assignments will be offered to senior, qualified, available extra or regular employees under the jurisdiction of the involved extra board. The burden in this case is on the Organization. To meet that burden, in this case the Organization must first sufficiently demonstrate that Williams improperly performed TPMS work. Based upon the evidence before us, that showing has not been made.

The record shows that the Lead TPMS Clerk was "... responsible for typing debit/credit errors." Giving the Organization the benefit of the doubt, we shall assume for the purpose of discussion that because Lead Accounting Clerk Taylor was absent, that stated function in Taylor's job advertisement became Claimant's function. Even with that assumption, however, the Organization has not factually carried its burden.

The record shows that calculations for the typing performed by Williams were performed by another TPMS Clerk, J. Vassor. All Williams - a Clerk-Stenographer - did was type the information prepared by TPMS Clerk Vassor onto the credit error notice form. In our opinion, the record in this case does not sufficiently demonstrate that a Clerk-Stenographer cannot perform that kind of typing function. At most, the Organization demonstrated that TPMS Clerks perform that clerical function. But the Organization has not factually refuted the Carrier's contention that Clerk-Stenographer Williams can also perform that function. Without more, in this case, the claim must be denied for lack of proof.

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 25th day of September 1996.