

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33260  
Docket No. CL-33761  
99-3-97-3-199**

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

**PARTIES TO DISPUTE:** (Transportation Communications International Union  
(Burlington Northern Railroad)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-11715) that:

1. On December 7 and 8, 1994, Carrier removed M. J. Peretto from his regular assignment of MWS Timekeeper Position 012 and assigned him as an Extra TY&E Timekeeper.
2. Carrier must now compensate M. J. Peretto for one (1) hour at straight time rate for each date, December 7 and 8, 1994, as provided in Rule 12.A(4)(c).”

**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.

On the claim dates Claimant was assigned as a Maintenance of Way and Structures (MWS) Timekeeper at the Carrier's regional Payroll Input Center (PIC) in Denver, Colorado. When Claimant reported for his assignment on the claim dates he was taken from that assignment and assigned the duty of locating and pulling train yard and engine files which was the work of Train Yard and Engine (TYE) Timekeepers working in the same office as MWS Timekeepers. On the claim dates MWS Timekeeper assignments other than Claimant's and TYE assignments worked. However, on the claim dates there also were vacancies in both MWS and TYE Timekeeper assignments in that office.

The Carrier's handling of Claimant on the claim dates generated the claim in this case. The Carrier denied the claim. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

The Organization argues that the Carrier's treatment of Claimant on the claim dates constituted filling a vacant TYE Timekeeper position which under Rule 12.A (4)(c) of the applicable schedule Agreement would entitle Claimant to the payment sought by Paragraph 2 of the claim. The Carrier argues that its treatment of Claimant on the claim dates constituted the assignment of Claimant to assist another employee under Rules 39 and 51 of the applicable schedule Agreement which would not entitle Claimant to any additional compensation.

We believe the record in this case more supports the position of the Organization than that of the Carrier.

On the claim dates Claimant was utilized for the full time of his MWS Timekeeper assignment to perform the duties of TYE Timekeeper assignments. No TYE Timekeeper assignment was blanked on he claim dates. In Award No. 196 of Special Board of Adjustment, Appendix K, involving the same parties the Board noted that "[I]f the Carrier assigns an employee to perform the duties of a blanked position, the Carrier is, in essence, filling the position. . . ." The Division agrees with the Organization that the same is true where the Carrier assigns an employee to perform the duties of a vacant, but unblanked position. The Board in Award No. 196 denied the claim in that case because there was no evidence in the record that any employee performed any of the duties of the blanked position. Obviously, the record in this case establishes, and the

**Carrier does not deny, that Claimant performed the duties of TYE Timekeeper assignments on the claim dates.**

**The Carrier's reliance upon Rule 39 to support its actions is misplaced. Rule 39 allows the Carrier in specific circumstances to assign an employee to assist another employee in the performance of his or her work. However, as emphasized by the Organization, the language of the Rule clearly applies to the assistance by one employee to another. The Carrier contends that in the instant case it assigned Claimant to assist a number of TYE Timekeepers in the performance of their duties. Such assignment appears to be at odds with the clear language of the Rule. Moreover, if the Carrier's interpretation of the Rule is correct, it would do serious damage to the proposition that work of an unblanked position belongs to that position and must be performed by an employee filling that position.**

**The Carrier's reliance upon Rule 51 to support its position in this case also is misplaced. Inasmuch as there is no support under Rule 39 for the Carrier, Rule 51 also is unavailable to the Carrier for that purpose.**

**The Board recognizes that Paragraph 1 of the claim in this case alleges that the Carrier has assigned Claimant as an Extra TYE Timekeeper. The Board also recognizes that the record does not substantiate that allegation. That fact, however, is not fatally defective to the claim because, as noted above, the Division concludes that by assigning Claimant to perform the duties of a TYE Timekeepers the Carrier in effect filled one of the TYE Timekeeper vacancies. Accordingly, under Rule 12.A(4)(c) Claimant is entitled to the additional compensation sought by Paragraph 2 of the claim.**

**AWARD**

**Claim sustained.**

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 6th day of May 1999.**