

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33404
Docket No. CL-34189
99-3-97-3-723**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11862) that:

Claim No. 1

I am filing claim on behalf of Mr. Donald Fallon, Ticket Seller, North Station, Boston, Massachusetts. Claim is for Saturday, October 28, 1995, 3:30 to 11:30 p.m. ticket sellers position North Station, Boston, Massachusetts. This claim is for eight (8) hours at the time and one half rate.

Carrier violated the Agreement when it allowed spare board employee to work the above listed position at straight time after attaining his forty (40) hour guarantee. Mr. Babin (Spare Board Employee), worked October 23, 1995, October 24, 1995, (marked off sick), and worked October 25, 1995, October 26, 1995, and October 27, 1995.

Appendix (e), Article #12, paragraph (C) states, “posting time, actual hours worked, including overtime, holiday pay, vacation pay and sick leave allowance will be utilized in computing the forty (40) hours guaranteed under the Agreement.”

Rules violated are Appendix E, Articles 4, 5, 6, 7, and 12 of the spare board Agreement.

This claim is presented in accordance with Rule 7-B-1 of the Agreement.

Claim is valid and must be paid.

Claim No. 2

I am filing claim on behalf of Mr. James Babin, spare ticket seller, North Station, Boston, Massachusetts. Claim is for eight (8) hours at time and one half for 3:30 to 11:30 p.m. ticket sellers position at North Station, Boston, Massachusetts, Saturday, October 28, 1995.

Carrier violated the Agreement when it claimed that Mr. Babin, who marked off sick on October 24, 1995, did not fulfill the requirement for his forty (40) hour guarantee and could work at straight time on Saturday, October 28, 1995.

Rules violated are Appendix E, Articles 4, 5, 6, 7 and 12.

This claim is presented as per Rule 7-B-1 of the Agreement.

Claim is valid and must be paid."

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.

The controlling language in this dispute is found at Rule 4-A-1 DAY'S WORK AND OVERTIME of the Agreement between the Parties. That provision reads as follows:

“Time worked in excess of forty (40) straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate of pay. . . .”

Appendix “E” simply guarantees an Extra Board employee 40 hours pay each work week if s/he is available to work. In the instant case, clerk Babin’s actual time worked during his work week was only 32 hours since he marked off sick on October 24, 1995. By asking him to work another eight hours, the Carrier was within the provision of Rule 4-A-1, and was not required to pay him time and one half for October 28, 1995 tour of duty.

Further, since Claimant Babin was properly employed at straight time, there was no work opportunity denied Claimant Fallon.

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 13th day of July 1999.