

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33415
Docket No. CL-34642
99-3-98-3-199**

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:

(AM-947) "Claim of the System Committee of the Organization (GL-11973) that:

- (a) The Carrier violated the Clerks' Rules Agreement effective July 21, 1972, as revised, particularly, Rules 1, 6, 7, 14 and other Rules, when the Carrier allows and permits Foreman, William Anderson, to perform Inventory Control Clerk duties of, but not limited to, inputting into the computer, preparing reports and other paperwork, which are duties otherwise historically assigned to and performed by Clerical Employees, located at the Amtrak Maintenance Facility, Material Department, Rensselaer, New York;**
- (b) Claimant Sibley should now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of the Inventory Control Clerk position, commencing sixty (60) days retroactive from the date of this claim and continuing for each and every day thereafter that Mr. Anderson is allowed to perform these duties, and until this violation is corrected;**
- (c) In order to terminate this claim all the involved duties must be returned to Clerical Employees;**
- (d) Claimant Sibley is qualified, available and should be used to perform this work;**
- (e) This claim has been presented in accordance with Rule 25 and should be allowed.**

(AM-948)

- (a) The Carrier violated the Clerks' Rules Agreement effective July 21, 1972, as revised, particularly Rules 1, 6, 7, 14 and other Rules, when the Carrier allows and permits Foreman, Al Blake, to perform Clerical duties otherwise historically assigned to and performed by Clerical Employees located at the Amtrak Facilities, Albany/Rensselaer, New York;
- (b) Claimant Kross should now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of her regular position, commencing sixty (60) days retroactive from the date of this claim and continuing for each and every day thereafter that Mr. Blake is allowed to perform these duties, and until this violation is corrected;
- (c) In order to terminate this claim all the involved duties must be returned to Clerical Employees;
- (d) Claimant Kross is qualified, available and should be used to perform this work;
- (e) 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 were given due notice of hearing thereon.

The Organization in this claim alleges that the Carrier violated the Clerks' Rules Agreement effective July 21, 1972, as revised, particularly Rules 1 (Scope), 6, 7, 14 and other Rules when the Carrier allowed and permitted Foreman William Anderson to perform Inventory Control Clerk duties and Foreman Al Blake to perform Clerical duties. The Organization claims the Inventory Control Clerk duties performed by Anderson and the Clerical duties being performed by Blake have historically been assigned to and performed by Clerical Employees.

A memorandum of December 8, 1996, from Assistant District Chairperson Kim Gilgallon to Vice General Chairman Oathout (TCU Exhibit A) contends that Foreman William Anderson has been performing clerical duties which should accrue to Claimant Sibley. The same memorandum also states that Foreman Al Blake used the computer assigned to Claimant Kross to input equipment status.

In denying the claim, Carrier responded: "...documents entitled "Inventory Accounting" related to a computerized internal audit function whereby computer data is compared to actual physical inventory." In addition Carrier stated that the major part of an Inventory Control Clerk's position is to order parts and ensure they are received as ordered. Carrier adds "it would be contrary to any recognized accounting procedures for the same clerk who orders the parts to be responsible for the internal audit of same."

The Board has read the record and notes the applicability of Third Division Award 29598 which states:

"The typical means of resolving this question is to examine the record to determine whether it demonstrates that the employees have customarily, historically and traditionally performed the kind of work in dispute."

See as well, Third Division Award 21269:

"Carrier has presented data affirmative to its position on this issue while Petitioner has providing nothing of substance. We have long held that assertion does not take the place of evidence."

Regarding Scope Rule 1, Rules 6 (Bulletin and Assignment Rule), Rule 7 (Short Vacancy Rule) and Rule 14 (Overtime Rule), the Organization offers no evidence that these Rules have been in any way violated in the case at issue.

Since the Organization has failed to offer substantial evidence that the clerical-type duties being performed by the foreman belong exclusively to the Clerks, the Organization has failed to carry its burden of persuasion.

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.