

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33509
Docket No. CL-34304
99-3-97-3-893**

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 (AMTRAK)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11893) that:

I. This claim is being filed because the Carrier violated the Amtrak NEC TC Agreement, particularly Rule 2-H-1(b) and others when it permitted David Scargall to work the 7:00 a.m. - 3:00 p.m., Operator position at Overbrook Tower on November 26, 1994, and the 6:30 a.m. to 2:30 p.m. lever position at Zoo Tower on November 27, 1994, and failed to call the two employees who were entitled to overtime.

Claimant Robert Bohne is entitled to 8 hours at the overtime rate for November 26 and Claimant Chris DiSciullo is entitled to 8 hours at the overtime rate for November 27.

Both Claimants were qualified, available and should have been called and used to perform this work.

This claim has been presented in accordance with Rule 5-A-1 and should be allowed.

II. This claim is being filed because the Carrier violated the Amtrak NEC-TC Agreement, particularly Rule 2-H-1(b) and others when it permitted David Scargall to work the 6:00 a.m. to 2:00 p.m. position at the Paoli Tower on December 12, 1994, and failed to call the employee entitled to overtime.

Claimant John Reed is entitled to 8 hours at the overtime rate for December 12, 1994.

The Claimant was qualified, available and should have been called and used to perform this work.

This claim has been presented in accordance with Rule 5-A-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 issue in the case is the application of Rule 2-H-1(b) of the Agreement.

Rule 2-H-1(b) reads as follows:

“An employee accepting temporary promotion to any of the positions covered by Paragraph (a) of this rule (2-H-1) shall retain his regular position and upon returning from such temporary promotion, shall have the rights specified in Rule 1-H-1. An employee accepting such temporary promotion for a period of more than five (5) working days (of the temporary assignment) will not be permitted while occupying the temporary assignment to perform service on any position under the Scope of this Agreement except in an emergency.”

In a letter dated January 17, 1995, denying the instant claim, Carrier's Manager of Operations Mid-Atlantic Division 1, responded to the Organization's allegations in part as follows:

"Mr. Scargall is a Block Operator posting a Train Dispatcher position. He is not only not yet qualified on any [Train Dispatcher] position but is not considered promoted until he has a regular extra list job. For this reason and due to the current shortage of qualified operators, Mr. Scargalls' services were utilized."

In that same letter the Manager of Operations pointed out that Mr. Reed was on vacation on the date he is alleged to have been eligible to work. Thus, he was actually not eligible to be called.

The Organization has not offered evidence that Claimant was a qualified, senior Train Dispatcher at the claim date nor has it offered evidence that he had been promoted temporarily or otherwise on the claim dates. Neither has it established that Claimants were senior qualified and available on the dates in question. In summary, the Carrier was in complete compliance with Rule 2-H-1(b)

After careful review of the record, we find the Organization's has provided no support for its allegation that the Carrier violated the Agreement. Accordingly, the instant claim is denied.

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 22nd day of September 1999.