

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34075
Docket No. CL-35157
00-3-98-3-901**

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

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

STATEMENT OF CLAIM:

“I. Claim of the System Committee of the Organization (GL-12230) that:

(a) This Claim is filed for four (4) hours at straight time for time off, or, four (4) hours at the rate of time and one half for no time off, whichever the Carrier can agree to provide at some time before the end of 1997.

(b) The Claim is for the following individuals for August 8, 1997:

B. Hill	D. Cuddy	J. Shamberger	J. Cadman
H. Beaunoyer	G. Hall	T. Sheehan	R. McMahon
P. Vardaro	M. Maloney	A. Williams	D. Devine
D. Flaherty	N. Blais	R. Adams	B. Kess
R. Gay	T. Bostwick		

(c) The Carrier violated the Agreement when C.E.O. Mr. Thomas Downs allowed employees, on August 8, 1997, an “early out” day at 1:30 p.m. due to their hard work. Supervisors with employees required to stay and provide adequate coverage, as well as those with employees whose work demands do not allow for such, should provide those employees a similar opportunity at a future date. The instructions of Mr. Downs have yet to be carried out on Amtrak-Commuter Rail. As such, employees are being discriminated against.

This Claim is valid and must be paid.

II. Claim of the System Committee of the TCU (NEC 1520) that:

This claim is filed for four (4) hours at straight time for time off, or, four (4) hours at the rate of time and one half for no time off, whichever the Carrier can agree to provide at some time before the end of 1997.

The Claim filed for the following individuals for August 8, 1997:

C. Moody	P. Peri	W. Morani	R. Doody
S. Filiti	D. Fallon	J. Kantorski	F. Stoppford

The Carrier violated the Agreement when CEO Mr. Thomas Downs allowed employees, on August 8, 1997, an "early out" day at 1:30 PM due to their hard work. Supervisor with employees required to stay and provide adequate coverage, as well as those with employees a similar opportunity at a future date. The instructions of Mr. Downs have yet to be carried out on Amtrak Commuter Rail. As such, employees are being discriminated against.

Rules violated are Preamble, 4-A-1, 4-A-4, 4-A-5, 4-E-1, 4-F-1, 4-F-2, 4-F-3, 5-E-1, 7-A-1, 8-H-1, 9-A-1, Appendix E, Article 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and all other rules of this Agreement, including amended agreements of 1991, and 1994, inclusive.

This 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 Claimants in this dispute are Clerical employees holding various positions in Carrier's Materials Department at Boston, Massachusetts. On August 8, 1997, former Amtrak President and CEO Tom Downs authorized an e-mail message that appeared to suggest that at local management's discretion, certain employees could leave early that date owing to the unusually hot weather. In the message, the CEO recognized that some employees, because of the nature of their responsibilities, would not be allowed to take advantage of the "early out" that day. He suggested that Supervisors might avail those employees of a similar opportunity at a later date.

By letter of October 4, 1997, the Organization filed the instant claim in which it alleged that the employees named therein did not receive an early out, and therefore should be given either time off with straight pay, or paid at the punitive rate for working the afternoon of August 8, 1997. In its response to the Organization denying the claim, the Carrier stated that it found no nexus between the "early out" situation and any kind of Rule violation. It noted that there is "no rule which allows for either time paid as not worked, or, penalty type compensation because of what allegedly occurred at our Corporate Headquarters on August 8, 1997.

The claim was subsequently appealed and progressed in the usual manner. Following conference on the property on February 12, 1998, the Carrier again denied the claim. In that letter, dated March 20, 1998, the Carrier again asserted that "none of the Rules cited or any other Rule of the current clerical Agreement provide for the payments sought in this dispute.

The Board reviewed the record in this case and finds no support for the Organization's position. It also notes in passing that it is unrefuted on this record that the Carrier previously allowed employees to leave work early on such days as Christmas Eve, and still receive compensation, with no protest from any of the Organizations representing the employees so affected. We find no basis upon which to sustain the present claim.

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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 May, 2000.