

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34177
Docket No. CL-34985
00-3-98-3-654**

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-12152) 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 effective on or about March 24, 1997, they established a Foreman II Position, awarded to Daniel Lapolla, and began to allow and permit him to perform duties of Claimant Ignneri’s position of Clerk Typist/Timekeeper/Statistical Clerk-Vacation Relief, of but not limited to, those duties shown on Attachments A, B and C, located at the Amtrak Maintenance Facility, Rensselaer, New York;**
- (B) The duties shown on Attachments A, B and C, have been historically assigned to, and performed by, the clerical employees at this location, until March 24, 1997, when the Carrier arbitrarily removed same from Claimant Ignneri’s position;**
- (C) Claimant Ignneri should now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of her position, commencing on March 24, 1997 and continuing for each and every day thereafter, until this violation is corrected;**
- (D) In order to terminate this claim all the involved duties must be returned to Claimant Ignneri;**
- (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.

In this claim the Organization alleges that when the Carrier established a Foreman II position on or about March 24, 1997, which it awarded to Daniel Lapolla, it allowed and permitted him to perform duties of the Claimant when she was employed as a Clerk at Amtrak's Rensselaer, New York, Mechanical Facility. The initial claim made by the Organization in a letter dated May 14, 1997, was denied by the Carrier as were subsequent appeals.

While the Organization alleges that the Carrier violated Rules 1, 6, 7, 14, and other Rules of the Agreement, Rule 1 - Scope, is the controlling issue in the case at hand. In pertinent part:

“RULE 1 - SCOPE

- (E) It is not the intent of the company to have supervisors perform work which is within the scope of this agreement. However, it is recognized that supervisors will occasionally perform such work, when necessary under critical and/or emergency conditions, while instructing employees, and/or when incidental to their assigned duties. Supervisors shall not be used to displace or replace employees regularly assigned to perform the task, nor will supervisors be used to negate the provisions of the overtime rules of this agreement.”

The Organization contends that the language of Rule 1 (E) makes clear the expectations of the Agreement. The Organization also contends that the work in question being performed by Foreman Lapolla is clearly clerical work. It further asserts that no critical or emergency condition existed to warrant Foreman Lapolla taking the Claimant's work. The Organization maintains that there is no showing that Foreman Lapolla was doing clerical work on critical, emergency conditions or as part of training of subordinates. In addition, the Organization asserts that statements from the Carrier Supervisors indicate that clerical work being done by Supervisors is not incidental, but is a regular part of their job in violation of the Agreement.

The Carrier maintains that the work in question being performed by Foreman Lapolla is not work reserved to the Organization by Rule 1 of the Agreement. The Carrier asserts that incidental clerical tasks are included in the supervisory function. In addition, the Carrier points out that employees of other crafts as well as outside contractors at all Amtrak facilities have traditionally and historically performed various clerical-type duties. Further, it contends that this type of work is performed daily by non-TCU employees across Amtrak's nationwide system.

After careful review of the record the Board does not find evidence that the functions of Foreman Lapolla's position belong historically, traditionally and exclusively, on a system or even region-wide basis, to the Organization. The Scope Rule is general in nature. It does not reserve the work at issue herein to the employees covered by the Agreement. In the case at hand the Board concurs with the findings of Third Division Award 19833, which reads in pertinent part:

"This Board is fully aware of the very serious consequences of a Scope Clause. Surely a Carrier must refrain from removing work from a class when it has agreed to refrain from said action by contractual language, but just as surely, a Carrier must not be found to guilty of such a severe violation without more than a conclusionary allegation, supported by a few isolated assertions which fail to specify with any degree of certainty the specific nature, times and amounts of removal. The burden of proof rests with the Organization. That burden exists for the protection of both parties as well as the Board and it is incumbent upon the claimant to produce sufficient evidence to support the version of the facts upon which it relies. See AWARD 10067 (Weston). Here, we have just a fleeting glimpse of the asserted facts."

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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 20th day of July, 2000.