

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35445
Docket No. CL-35442
01-3-99-3-354**

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)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12351) that:

The following Claim is hereby presented to the Carrier on behalf of Claimant Cindy Knowlton:

- (a) The Carrier violated the Clerks’ Rules Agreement particularly Rule 14 and other rules, when it permitted and allowed Personnel Manager, Ann Bell to perform Secretarial duties and Bulletin and Assignment duties, at the Beech Grove Amtrak Facility on October 29, 30, 31, and November 3, 4, 5, 6, 7, 20, 21, 24, 25, 26, and 28, 1997, and failed to call and work Claimant to perform these duties at the punitive rate of pay.
- (b) Claimant Cindy Knowlton now be allowed 8 hours pay per day at the punitive rate of \$16.05 per hour, for October 29, 30, 31, and November 3, 4, 5, 6, 7, 20, 21, 24, 25, 26, and 28, 1997, on account of this violation.
- (c) Claimant was qualified, available and should have been used to perform this work.”

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 the time of the dispute, the Claimant was assigned as a Timekeeper/Clerk at Amtrak's Beech Grove, Indiana, Mechanical Facility. Her assigned hours were 7:00 A.M. to 3:00 P.M. with workdays of Monday through Friday. In effect is a current Rules Agreement, dated July 1, 1979, covering the craft in which the Claimant is employed.

The claim deals with clerical work that was performed by a non-contract employee, specifically Personnel Manager Bell, at the Beech Grove facility between October 29 and November 26, 1997. While a fellow Clerk was on vacation, other employees furnished the Carrier with a day-by-day listing of bulletins and awards typed. The Organization holds that this work was not minor and some days in addition to documents being typed, they were proofread and distributed. Due to the level of work, the Organization states that the Claimant should have been called to perform the clerical work.

The Organization contends that the Carrier violated Rule 14 and Rule 1- Scope of the controlling Agreement. Rule 14, in the Organization's opinion, requires that in the instance that a regular clerical employee is unavailable to perform their normal work, then the work must be performed by an available Clerk, at overtime, if necessary. They also assert that the General Manager admitted the Carrier's mistake in a letter dated January 29, 1998. Through this letter, the Organization claims to show that the Carrier gave an assurance that in similar circumstances in the future the Carrier will follow the contractual provisions found in Rule 14.

The Organization in their submission also addresses Rule 1- Scope because the Carrier referred to Bell as having "performed certain minor clerical duties in accordance with Scope Rule 1." The Organization contends that the preparation of bulletin and assignment duties, as well as secretarial duties, far exceeds "minor" duties.

It feels that the Scope Rule does not protect the Carrier from the claim for three main reasons summarized as follows:

- (1) The Carrier does not intend for its supervisory people to perform clerical work.**
- (2) There is no evidence in this case that the Carrier was faced with a critical and/or emergency situation when the Personnel Manager performed the disputed work.**
- (3) Supervisors cannot be used to displace or replace employees regularly assigned to tasks, nor can they be used to avoid overtime provisions.**

The Carrier contends that the Organization has failed to demonstrate how the Agreement was violated and that it has not presented any evidence that a violation occurred. Specifically, it holds that no evidence was presented to show the Claimant in this dispute lost any compensation or would have been available to work on any of the dates in question.

It is the Carrier's position that Rule 14 of the Agreement was not violated. They contend that no overtime work was necessary on any of the claim dates and that the Claimant failed to offer any evidence proving the contrary. The Scope Rule is the more pertinent area of the contract in the Carrier's opinion. This Rule, it contends, governs and supports the decisions that were made in the disputed situation. The Scope Rule, in their opinion, allows Supervisors to perform clerical work under certain conditions on occasion as did occur in this instance. Finally, the Organization failed to provide any evidence that the duties in dispute were reserved solely to the TCU craft.

The Carrier maintains that at the Beech Grove facility the management employees have traditionally and historically performed minor clerical duties similar to the disputed work and no claims were filed. In fact, it contends, that across Amtrak's nation-wide system non-TCU employees perform such work on a daily basis. The Carrier further asserts that the Organization has offered no proof to rebut that the disputed work is not exclusive to the TCU craft at Beech Grove or other Amtrak locations by custom, tradition, or practice.

The Carrier contends that based on the above arguments the claim should be denied or dismissed due to the Organization's failure to present any evidence showing that the Rules of the Agreement were violated.

The Board finds that the Organization did not meet the burden of persuasion in this case. No violation of the Scope Rule of the controlling Agreement occurred because the amount of work performed by Personnel Manager Bell was minimal and incidental to her duties as Manager. The Organization offered no evidence that the disputed duties were reserved to the TCU craft through custom, tradition, or practice. Furthermore the Claimant was fully employed at the time, so there was no loss of work or compensation. In light of the foregoing, the Board finds no basis on which to sustain this claim.

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 26th day of April, 2001.