

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36807
Docket No. CL-37530
03-3-02-3-564

The Third Division consisted of the regular members and in addition Referee M. David Vaughn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12927)
that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement on April 16, 2001, when it used its remaining Extra List position located at the “40” office at 400 W 31st Street NY, NY (incumbent Nancy Goldstein) to avoid establishing new positions and used said Extra List position to abolish regular assigned position, Passenger Movement Clerk (PMC), Symbol No. MC-3, located at the “40” office as said location - 400 W 31st Street NY, NY on April 16, 2001.

The Carrier is in violation of Appendix E (the extra list agreement) articles 13-(A), which reads in part: ‘These Extra Boards will not be used to avoid the establishment of new positions where required under Rule 2-A-1 nor will they be used for the purpose of abolishing regular positions.’ Rule 2-A1, Rule 5-E-1, Rule 4-F-1, and other rules.

Claimant C. Breen now be allowed eight hours at the pro rata rate of a PMC Clerk for each and every work day thereafter of violation until such time violation ceases to exist.

This claim has been presented in accordance with Rule 7-B-1 of the Off-Corridor Clerks Rules Agreement, Rule 25, and should be allowed and accepted.”

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.

By Memorandum dated April 10, 2001, the Claimant was advised that her position as Passenger Movement Clerk, Symbol No. MC-3, “will be abolished close of business Monday, April 16, 2001. Please be governed accordingly.” Apparently, another similar notice was delivered to another employee who is not part of the instant claim. On April 19, 2001, the Organization wrote to the Carrier requesting that it state where the resultant duties of the abolished positions would be assigned. The Organization further stated that because the Carrier’s notice did not inform the employees of that fact, the abolishment notices should be rescinded.

Appendix E contains the Memorandum of Understanding between the Carrier and the Organization concerning the procedure for filling extra assignments and vacancies that accrue to clerical employees on the National Railroad Passenger Corporation Northeast Corridor. Article 13 provides as follows:

“(A) These extra boards will not be used to avoid the establishment of new positions where required under Rule 2-A-1 nor will they be used for the purpose of abolishing regular positions.”

By letter dated May 10, 2001, the Carrier advised the Organization as follows:

"The facts disclose that due to budgetary constraints, the Metropolitan Division did issue a series of job abolishments and over different departmental jurisdictions. Our operations center, claimant's prior headquarters was affected. There were four (4) clerical positions abolished, which also included claimant."

The District Chairman responded by letter dated May 30, 2001 that the Carrier had failed to provide the requested information, and again requested that the information concerning where the resultant duties of the position would be assigned be provided.

The Organization argues that the Carrier violated Article 13(A) of the Appendix E Extra List Agreement by using the extra list positions to absorb the work that remained following the abolishment of the two positions. It further contends that the Carrier's denial of the claim lack specificity. Citing authority, the Organization contends that the Carrier is obligated to write a denial which "sets forth the reasons for such disallowance." The Organization argues that in its August 20, 2001 response to the claim the Carrier stated that "it is not the Carrier's responsibility to investigate circumstances surrounding an abolishment." It further maintains that despite the Organization's request for information on where the resultant duties of the position would be assigned, the Carrier never directly responded. For these reasons, the Organization urges that the claim be sustained.

The Carrier argues that the claim is without merit. It contends that decisions regarding the assignment of work, including the abolishment of positions, are a prerogative of the Carrier. It maintains that there is no Rule that bars the Carrier from abolishing the position which is the subject of the claim. It argues that while the Organization cites Scope Rule 1, Appendix E, Article 13-(A), Rule 2-A-1, 5-E-1, 4-F, and other Rules, "no facts or arguments have been developed by the union to demonstrate just how these alleged violations occurred." Citing authority, the Carrier argues that the Organization has the burden to establish a violation of the Agreement, but has failed to do so in this dispute.

With respect to the specific Rules relied on by the Organization, the Carrier asserts that Scope Rule 1 merely sets forth certain types of clerical functions which clerical employees perform and is not a "positions and work" Scope Rule. The Carrier points out that it simply rearranged its clerical forces at the '40' office in New York. The Carrier asserts that Appendix E is the parties' Guaranteed Extra Board, and merely outlines the manner in which vacancies are covered. The Carrier contends that Rule 2-A-1, which governs the bulletining and awarding of positions, is inapplicable because no positions were bulletined or awarded in this dispute. The Carrier argues that Rule 5-E-1, which outlines the 40 hour workweek and how positions will be established, is also inapplicable because no new positions were established in the '40' office. The Carrier argues that Rule 4-F-1 governs rates of pay and bars the Carrier from abolishing positions and assigning work to lower rated positions. It contends that it did not reduce any rates of pay or assign higher rated work to lower rated positions. Citing authority, the Carrier argues that it has the right to manage its work force and determine how work will be performed. It maintains that its actions were within its rights.

Finally, the Carrier argues that the Organization has requested a penalty payment which is wholly unjustified because no violation occurred. It points out that the Organization also failed to show that the Claimant suffered any monetary loss. For all of these reasons, the Carrier urges that the claim be denied.

The Board is persuaded, based on a review of the Agreement and Rules cited by the Organization, it failed to establish any violation of the governing Agreement. The Organization contends that the Carrier violated Article 13. That article provides:

"(A) These extra boards will not be used to avoid the establishment of new positions where required under Rule 2-A-1 nor will they be used for the purpose of abolishing regular positions."

The Organization has not proffered any evidence that the Carrier utilized the Extra Board to "avoid the establishment of new positions" or for the purpose of abolishing the positions at issue. The evidence shows that the positions were abolished and the Claimant was moved to another position at the same rate of pay. The Claimant did not suffer any loss because of the Carrier's action.

The Carrier has the authority under the Agreement to determine its structural organization. None of the provisions relied upon by the Organization in this instance were violated.

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 29th day of December 2003.