

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39850
Docket No. CL-40426
09-3-NRAB-00003-080131

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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-13190)
that:

- (1) That the Carrier violated the Crew Management Representative (CMR) Agreement, dated January 15, 1993 when on July 27, 2002 it notified Claimants S. Davis, K. Deal, F. Episcopo and R. Freeman that some of the compensatory time they earned and were granted by their previous management while working as GADS was being taken from them.
- (2) That there is no provision in the CMR Agreement allowing this action to be taken. Claimants were granted these compensatory days while working in the GAD department and brought them in their banks to your department when the GADS were abolished.
- (3) That the days now be restored to the Claimants' banks in the following manner:

S. Davis	4 days
K. Deal	3 days
F. Episcopo	1 day
R. Freeman	1 day

(4) This Claim has been presented in accordance with Rule 6 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.

The basic facts of the instant case do not appear to be in dispute. Claimants Shawn Davis, Kevin Deal, Fred Episcopo and Riley Freeman were previously employed at Wilmington, Delaware, as Guest Advocacy Representatives (GADs). Employees working in this capacity are covered by the Crew Management Representative (CMR) Agreement dated January 6, 1993. While employed as GADs, the Claimants accrued compensatory time pursuant to Rule 4(d) of the CMR Agreement. Subsequent to earning this compensatory time, the Carrier ended the GAD program and eliminated its positions. The Claimants were then required to exercise seniority to CMR positions. On July 27, 2002, the Claimants were notified that their compensatory time as GADs was being removed, which gave rise to the instant dispute.

The Organization contends that the Carrier violated the current CMR Agreement when it removed the compensatory time from the Claimants' banks. Once that time was earned, it should have carried over to the Claimants' new respective positions after the Carrier eliminated the GAD positions. As a remedy, the Organization requests that the Claimants' earned compensatory time be reinstated.

Conversely, the Carrier contends that it acted properly in removing the Claimants' compensatory time when the GADs were eliminated and the Claimants were required to exercise their seniority. According to the Carrier, the CMR Agreement has no provision mandating that Management honor previously earned compensatory time from another department. According to the Carrier, had the parties intended that compensatory time would be carried over, the parties would have so indicated. They did not do so. Because the burden of proof is on the Organization, the Carrier contends that the Organization cannot meet its burden of proof. The Carrier contends that it acted appropriately when it did not allow the Claimants to carry over their compensatory time.

After a review of the evidence and positions of the parties, the Board finds that the Organization has been unable to meet its burden of proof. The Organization has been unable to prove that the Carrier violated the CMR Agreement when it did not allow the Claimants to carry over compensatory time. Therefore, the 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 31st day of July 2009.