

NATIONAL RAILROAD **ADJUSTMENT BOARD**

THIRD DIVISION

Award Number **21401**

Docket Number CL-21121

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7902) that:

1. The Carrier violated the effective Clerks' Agreement when on April 19, 1974 and on subsequent dates listed in Section 2 hereof, it employed the services of A. Savaiano, an outsider, having no previous employment relationship or antecedent seniority, hence a non-bona fide **employee**, to fill short vacancies **and/or** perform extra work.

2. The Carrier shall **now** be required to compensate the following named regular **employees**, with established seniority, for eight (8) hours' pay at the time and one-half rate of the position specified on which A. Savaiano was used for **each of** the dates specified below:

<u>Claimant</u>	Date	Position <u>Filled</u>
T. Anhalt	April 19, 1974	#230
H. Webber	April 24, 1974	#383
S. Wojcik	April 25, 1974	8383
S. Wojcik	April 26, 1974	#383
B. Blacklaw	May 2, 1974	# 34
H. Webber	May 3, 1974	# 34
H. Webber	May 4, 1974	East Yard Extra
S. Wojcik	May 6, 1974	a 34
S. Wojcik	May 7, 1974	# 34
B. Blacklaw	May 8, 1974	# 34
B. Blacklaw	May 9, 1974	# 34
H. Webber	May 10, 1974	# 34
K. Montello	May 13; 1974	# 34
H. Bentley	May 14, 1974	# 33
B. Blacklaw	May 15, 1974	# 71
E. Downs	May 16, 1974	#332
H. Webber	May 17, 1974	# 33
T. Anhalt	May 20, 1974	#228
v. west	May 23, 1974	#228

OPINION OF BOARD: On Friday, April 19, 1974 a vacancy existed on a regular assignment, position No. 230, with assigned hours 3:00 p.m. to **11:00** p.m. There were no furloughed **employees** available and Carrier, as it states, made "every possible attempt to fill position No. 230 at the penalty rate." Carrier, in support of this statement, said that it contacted J. **Marks**, Chief Clerk to the Car Accountant.

The parties are in essential agreement that an employee with no seniority could be used on the vacancy only if no **employees** holding seniority were available to fill it. Claimant was not available, says Carrier, because he was holding an 8:00 a.m. to **4:30** p.m. **turn** on that date and would not have been able to fill the first hour and one-half of the vacancy. J. Marks, who Carrier says it contacted, was holding a turn on the same date with the same hours as Claimant. The record does not show why Carrier considered Marks available and the Claimant unavailable. It may be, as the Board has been told, that Marks' position could be blanked for the hour and one-half while Claimant's position could not be. However, there is 'nothing in the record to support that supposition and the Board must act on evidence, not speculation.

The record does show that Mr. Marks, **who** was contacted by Carrier about the vacancy, **is** many places junior to the Claimant **Anhalt**. By contacting Mr. Marks for the vacancy and by pointedly referring to that fact in its handling of the **claim**, **Carrier** has permitted a reasonable inference that it recognized a requirement to fill the vacancy with an employee holding seniority **and** an obligation to call an "out of line" employee for it.

The record, as it stands, shows Carrier's recognition of that obligation and it also shows Claimant **Anhalt's** greater seniority. Under the circumstances, it was incumbent upon Carrier to enter into the record its reason for not recognizing that seniority. It did not do so and under the circumstances the Board is disposed to sustain the claim.

In our determination in this case, we have not considered the arguments and counter arguments concerning the Memorandum of **Agreement** dated **March** 30, 1966 which were raised for the first time before this Board.

FINDINGS: ~~The Third Division of the Adjustment~~ Board, upon the whole **record** and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute **involved herein;** and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.