

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23216  
Docket Number CL-22961

George E. Larney, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(The Baltimore and Ohio Railroad Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(GL-8785) that:

(1) Carrier violated the Agreement in effect between the Parties when it used an employee who had not filed a written request, as required, to fill a short vacancy arising on Chief Clerk position A-0001, rated \$72.81 per day, at Division Manager's Office, Baltimore, Maryland, on ten (10) dates - July 5 through July 16, 1976 in lieu of General Clerk T. A. Kursch, the senior regularly assigned employee who had filed written request to fill such short vacancy, and

(2) Carrier shall, as a result, be required to compensate Claimant T. A. Dursch, the amount of \$15.23 per day, representing the difference between the General Clerk position C-144 worked (857.58 per day), and Chief Clerk position A-0001 denied (\$72.81 per day), for the ten (10) work-dates of July 5, 6, 7, 8, 9, 12, 13, 14, 15, and 16, 1976.

**OPINION OF BOARD:** We note in reviewing the instant case that the parties, as well as the facts and circumstances, are similar to those in Third Division Award No. 23215, in which we said that Rule 24 of the June 4, 1973 Controlling Agreement contractually obligated the Carrier to fill the vacation vacancy of the Chief Clerk in the manner prescribed in Rule 24, Sections (a)(1) through (a)(3). Instead, Carrier filled the Chief Clerk's position on the claim dates in question with the Assistant Chief Clerk thus denying the Claimant, General Clerk T. A. Kursch, as senior regularly assigned employee having filed written request to fill the Chief Clerk's vacancy, of his contractual right to assume said position. Carrier's action here prevented the Claimant from earning a higher pro rata rate for each of the vacation days in question. We find, as we did in Third Division Award No. 23215, the claim to be sustained.

The Claimant shall be paid the difference between the pro rata rate of his regularly assigned position of General Clerk and that of the pro rata rate of the Chief Clerk's position which at the time amounted to \$15.23 per day. The Carrier is thus directed by the Board to pay the Claimant a total of \$152.30, which equals the compensation he would have earned had he, rather than the Assistant Chief Clerk, filled the Chief Clerk's position on the ten (10) claim dates in question.

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 16th day of March 1981.

