

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

W. S. Coleman, Referee

Award Number 25378  
Docket Number CL-24506

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

PARTIES TO DISPUTE: (  
(Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(**GL-9559**) that:

"1. Carrier violated the terms of the Clerk-Telegrapher Agreement in effect between the Parties when, on the various and separate occasions covering the dates of April 16, 17, 18 end 19, 1979; May 7, 8, 9, 10 and 11, 1979; May 24, 25, 29, 30, 31, 1979; June 1, 4, 5, 6 and 7, 1979; and July 9, 10, 11, 12, 16, 17, **18**, 23, 24, 25, 26 and 27, 1979, it held off or removed Mr. D. W. Woods from his regularly-assigned Bill Clerk position (**8:00 AM to 4:30 PM**), Rochester, New York Agency, and assigned him to perform duties of Chief Caller-Operator position (**5:00 AM to 1:00 PM**), Brooks Avenue Yard, Rochester, New York, and it failed and refused to compensate him in accordance with Agreement Rules, and

2. Carrier further violated the Clerk-Telegrapher Agreement on April 20, 1979, when it held off or removed Mr. A. J. **Catalano** from his **regularly-**assigned Section **Stockman** position (**7:00 AM to 3:30 PM**), Rochester, New York, and assigned him to perform duties of Chief Caller-Operator position (**5:00 AM to 1:00 PM**), Brooks Avenue Yard, Rochester, New York, and it failed and refused to compensate him in accordance with Agreement Rules, and

3. Carrier shall compensate Claimants D. W. Woods and A. J. **Catalano** the difference in the amount of compensation received each date, and the amount of compensation due each date, because of said violations on the following basis:

For each day so used, eight (**8**) hours' pay at pro rata rate of Claimants' regular-assignments from which diverted."

OPINION OF BOARD: Claimants D. W. Woods and A. J. **Catalano** are Clerks employed by Carrier at its facilities in Rochester, New York. On numerous days in April, May, June, end July 1979, Carrier designated Claimant Woods, who was regularly assigned as a Bill Clerk from 8:00 A.M. to **4:30 P.M.**, to perform the duties of the Caller-Operator between 5:00 A.M. to 1:00 P.M. On April 20, 1979, Carrier held Claimant **Catalano** off his regularly assigned position as Section **Stockman** on the 7:00 A.M. to **3:30 P.M.** shift and assigned him to the Chief Caller-Operator position, **5:00 A.M.** to 1:00 P.M. Organization contends that this diversion of Claimant from his regularly assigned positions is a violation of Rules 24 end 25 of the Agreement. Organization contends that Carrier should have gone to the Extra Board at any location in the seniority district or to the layoff list to fill the vacancy of Chief Caller-Operator at Rochester.

This Board has decided numerous cases involving identical situations in the past. We have generally stated that when the only qualified available employee to fill a critical position is another regularly assigned employee, that employee can be used in the vacant position, as authorized by Rule 24, Note (a), of the Schedule Agreement:

**"Note:** (a) The parties agree that an employee may be held off or removed from his assigned position to work a vacancy under emergency conditions when such vacancy cannot be filled in any other manner. The involved employee is entitled to his regular rate, or the rate of the vacancy, whichever is higher, with a minimum of eight (8) hours, and penalty rate for all hours worked outside of his regularly assigned hours."

We find no evidence in the record before us to refute Carrier's position that an emergency existed, as contemplated under Note (a). We will therefore deny the instant claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of April 1985.

LABOR MEMBER'S DISSENT TO  
AWARD 25378, DOCKET CL-24506  
(REFEREE W. S. COLEMAN)

The majority has erred in this instance and  
for the sake of brevity, we will state that our  
Dissent in Award 25382, involving the same parties,  
is directly on target with this case.

  
William R. Miller, Labor Member

Date April 23, 1985