

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31810
Docket No. CL-31553
96-3-93-3-541**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10981) that:

The following claim is hereby presented to the Company in behalf of Claimant G. Shields.

(a) The Carrier violated the Clerks' Rules Agreement effective September 26, 1990, particularly Rules 2, 12, 13, Appendix I and other Rules, when effective on or about September 28, 1992, they improperly established a 'special assignment' or a 'PEP' position to perform clerical duties of, but not limited to, the handling waybilling, assigning same to B. Crowley and failed to obtain an agreement with the General Chairman as is required under the provisions of Rule 2(b).

(b) Claimant should now be allowed eight (8) hours punitive pay based on the pro-rata hourly rate of \$13.84, commencing on or about September 28, 1992, and continuing for each and every workday thereafter, in addition to any and all other earnings of junior employee B. Crowley, on account of this violation.

(c) That in order to terminate this claim, the Carrier must advertise said position as a fully covered assignment, or they must secure the required agreement from the General Chairman to establish this position with a PEP status.

(d) Claimant is senior, qualified and would have been eligible to bid said position had the Carrier properly advertised same.

(e) This claim has been presented in accordance with Rule 28-2 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.

In this dispute, both the Organization and the Carrier are correct that much of the material and argument set forth in their Submissions was not included in the on-property claim handling process. It can be reasonably concluded, however, that the Organization is arguing that the placement of an employee in a "special assignment" was in essence the creation of a Partially Excepted Position and that the Carrier failed to obtain agreement of the General Chairman, as required by Rule 2.

From September 28, through November 1, 1992, a Clerk was utilized variously for a demurrage audit, ship billing and cargo declarations, and as a temporary replacement in a supervisory function. The claim is on behalf of a more senior Clerk, with the Organization contending the Claimant was deprived of the opportunity for these "special assignments."

The Organization has not provided grounds to support an allegation of Agreement violation. No Partially Exempt Position was established; no new bargaining unit position was created; no mention was made of any change in pay rate or other benefits for the selected employee. Nothing in the Agreement was cited to inhibit the Carrier from selecting a qualified person for a "special assignment" of limited duration.

Form 1
Page 3

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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 26th day of December 1996.