

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32412  
Docket No. CL-32124  
98-3-94-3-528**

**The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.**

**(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(Houston Belt & Terminal Railway Company**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Organization (GL-11097) that:**

- 1. The Houston Belt & Terminal Railway Company violated the Rules Agreement effective April 15, 1972, as amended, when it failed to utilize clerical employee A. S. Barboza on position of Chief Clerk Job No. 5101 on October 25, 1993.**
- 2. The Houston Belt & Terminal Railway Company shall be required to afford clerical employee A. S. Barboza for eight (8) hours pay at the overtime rate of position Chief Clerk Job No. 5101 for date of October 25, 1993."**

**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.

On October 25, 1993, Chief Clerk L. B. Chambers marked off sick on Job 5101 (7:00 A.M. to 3:00 P.M.). Clerk G. A. Nunnery was rearranged from Settegast Messenger to the Chief Clerk's position. The Organization asserts that action was improper and that Claimant should have been offered the position.

Rule 9(d) states that "Employees . . . who wish to be called in the rearrangement of force . . . will so advise the Terminal Manager in writing, stating which positions they wish to be called for in rearrangement of the regular assigned force in that office."

According to the Organization, "Mr. Nunnery was not on the rearrangement for Chief Clerks Jobs, he was down for overtime only." In support, the Organization offered an undated move up list which did not have Nunnery's name designated for move up. The Carrier, however, asserts that "Mr. Nunnery had requested in writing to the Terminal Manager, Mr. J. W. Perry, to be rearranged to work Chief Clerk." In support of that position, the Carrier offered the statement of Terminal Manager Perry which stated "Mr. Nunnery has submitted a request several times and pulled it off on several times, and this will explain why he was not on the undated move up list furnished by the TCU. On the date in question Mr. Nunnery did in fact have a request filed in writing and properly placed on the position."

Based on the above, the Organization has not carried its burden to show that Nunnery had not indicated his desire in writing to move up in accord with Rule 9(d). Instead, the evidence from Terminal Manger Perry shows that Nunnery had, in fact, made such a request in writing which was in effect at the time covered by the claim.

### **AWARD**

**Claim denied.**

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**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 21st day of January 1998.**