

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33182  
Docket No. CL-34027  
99-3-97-3-361**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**PARTIES TO DISPUTE:** (Transportation Communications International Union  
(National Railroad Passenger Corporation (AMTRAK))

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-11750) that:

- (a) The Carrier violated the Clerks Rules Agreement effective July 21, 1972, as revised, particularly Rules 7, 14, and other rules when they assigned and permitted junior employee Lynn Smith to perform the duties of Terminal Report Clerk - Lead (vice A. Nesel), during the 8:00 a.m. - 5:00 p.m. tour of duty, on February 22, 1996, and failed to call and use Claimant Gaunay.
- (b) Claimant Gaunay should now be allowed eight (8) hours punitive pay, based on the pro-rata hourly rate of \$14.50 for February 22, 1996, on account of this violation.
- (c) Claimant was qualified, was ready, willing and able to perform the duties claimed, had the Carrier permitted her to do so.
- (d) This claim has been presented in accordance with Rule 25 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.

At the time this dispute arose, Claimant was assigned to a regular Customer Service clerical position at the Albany/Rensselaer, New York, station. On Thursday, February 22, 1996, a vacancy existed on the position of Lead Clerk/Typist, and a Clerk junior to Claimant was sued to protect the vacancy. By letter of February 26, 1996, the Organization filed a claim on Claimants behalf in which it alleged that Claimant should have been called to fill the vacancy in question. The claim was denied on March 7, 1996, and was subsequently progressed in the usual manner.

In support of its position, the Organization maintains that the Carrier's own standard for the position at issue is 40 words per minute typing, not 50 words per minute as Carrier required of Claimant. It notes that Claimant attained that figure in her typing test, and argues that she should have been called for the vacancy.

The Carrier asserts that the requirement for the position is, indeed, 50 words per minute, not 40. It points out that the personnel bulletin on which the Organization relies indicates that 40 words per minute may be permissible for short vacancies at some locations. The Carrier insists that this was not one of those locations. Further, the Carrier notes that Claimant was given three chances to achieve the necessary proficiency, but failed to accomplish more than 43.5 words per minute. Thus, even allowing for a performance rate of 90% - equal to 45 words per minute - Claimant did not qualify for the position.

As in all cases of this nature, the Carrier is acknowledged to have the right to set reasonable standards of ability before allowing an employee to fill a position. The Organization has not shown that the standards set in this instance were either unreasonable or arbitrary. Nor has it shown that this position was, in fact, one of the short-term vacancies that could be filled by an employee with a minimum typing speed of 40 words per minute.

In light of the foregoing, the Organization has not carried its burden of persuasion.

**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 25th day of March 1999.