

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 33593  
Docket No. CL-33208  
99-3-96-3-644**

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: (  
(Burlington Northern Santa Fe Railroad**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Organization (GL-11404) that:**

**(a) Carrier violated the rules of the current Clerks’ Agreement at Topeka, Kansas, commencing December 20, 1994, when it wrongfully disqualified Mr. J. J. Mosqueda from Position No. 6283, Section Clerk, and**

**(b) Claimant Mr. J. J. Mosqueda shall now be returned to Position No. 6283 and compensated eight (8) hours’ pay at the pro rata rate of Position No. 6283 for each work day Claimant is wrongfully withheld from Position No. 6283, in addition to any other compensation Claimant may have received, as a result of such violation.”**

**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.

Claimant's Section Clerk Position No. 6012 was abolished effective September 30, 1994. As a result, Claimant displaced to Section Clerk Position No. 6283 effective October 3, 1994. Claimant was disqualified from that position on December 20, 1994. The claim protests that disqualification.

This record sets forth in detail extensive training and assistance given to Claimant before his disqualification. The evidence sufficiently shows that after 43 days of working the position, Claimant did not have the ability to perform the work of the position -- work was backed up, Claimant was slow in writing orders, and Claimant committed errors exposing the Carrier to potential liability. To the extent the Organization disputes the Carrier's proffered evidence, the record is in conflict and we find the Organization's burden has not been carried.

**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 16th day of November 1999.