

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36382
Docket No. CL-36947
03-3-01-3-534**

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis 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-12767) that:

The Carrier violated the Amtrak-Northeast Corridor Clerks' Rules Agreement on April 13, 2000 and other dates, when interviews for a Bid/Bump position of Job Symbol No. BAC-1 Assignment Clerk, Metropolitan Division, located at 400 West 31st Street, NY, hours 7:30 a.m. to 4:00 p.m. began. Claimant Ms. Tammy Gardner now be paid for each and every day to which job is withheld from her to bid upon, at the daily Assignment Clerk rate of \$140.16 and that Job Symbol No. BAC-1 now be advertised as a bid and bump position as according to the Collective Clerks' Rules Collective Bargaining Agreement at Amtrak.”

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 Ms. Tammy Gardner was assigned as a Ticket Clerk at Penn Station in New York City when the instant claim was filed. It appears from the record that this claim has two parts. First, the position in question was a Partially Excepted Position that had been vacant for more than 90 days and, as such, the PEP status should have been eliminated and the job posted as a Bid and Bump position.

The second part of the claim seems to be that the job was not properly posted. Thus, the Claimant did not have a chance to bid on it before it was filled. The record reveals, however, that the Assignment Clerk position was vacant for an extended period of time and was posted on three separate occasions in January, February, and March 2000. The Claimant worked in Penn Station and the postings were made in the normal TCU posting areas and should have been seen by the Claimant.

In reviewing this case, the Board has concluded that the Organization has not demonstrated in any convincing manner that the Clerks' Agreement has been violated by the Carrier or that the Claimant was disadvantaged in any way. The Claimant made no effort to apply for the vacant position at any time while it was available. She failed to act on her own behalf at her peril.

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 18th day of February 2003.