

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38373
Docket No. CL-38561
08-3-NRAB-00003-040583
(04-3-583)

The Third Division consisted of the regular members and in addition Referee Robert E. Peterson when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-13068) that:

1. The Carrier violated Rule 40 – Extra Lists and others of the CSXT North Agreement on Saturday, November 8, 2003 at Hagerstown, MD when G. S. Stanley was runaround and not called for the Chief Clerk position at straight time and the position was filled at penalty time.
2. Carrier shall now compensate employee G. S. Stanley, ID No. 1520632, seniority date of 05-02-79, assigned position 4D40-999, assigned rest days of various, eight (8) hours at pro rata rate of \$23.18 per hour, and four (4) hours at penalty rate of \$23.18 per hour, a total of \$324.54 for this violation.
3. This claim has been presented and progressed in accordance with the provisions of Rule 45 of the parties’ Agreement 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.

The claim involves the protest of Claimant G. S. Stanley, an employee assigned to a position on the Guaranteed Extra Board at Martinsburg, West Virginia, that the Carrier violated Rule 40, "Extra Lists," of the Agreement in not calling her to protect what is referred to by Claimant and the Organization as being a Chief Clerk vacancy at Hagerstown, Maryland, on Saturday, November 8, 2003.

In study of the record the Board finds that during the appeal process of the claim on the property the Carrier essentially offered the following unrefuted statements as the basis for its denial of the claim: (1) There was no clerical vacancy to be filled or protected by the Martinsburg Extra List (2) The Chief Clerk position was a five-day per week assignment, with no Saturday relief (3) The position filled on Saturday, November 8, 2003 was that of a "Substitute Yardmaster" (4) The employee used on the date at issue, J. D. McCoy, was a clerical employee qualified to work as a Substitute Yardmaster and (5) No clerical duties were performed by McCoy on the date at issue.

In further denial of the claim on appeal, the Carrier furnished the Organization a copy of McCoy's payroll record. This record documented that McCoy had been paid the Chief Yardmaster rate of pay, not the Chief Clerk rate of pay as mentioned and sought in the Statement of Claim. Certainly, it would seem that if the vacancy was that of a Chief Clerk the Carrier would not have allowed McCoy the higher Chief Yardmaster rate of pay. In this same respect, the Board finds it note worthy that in correspondence of record the Organization itself acknowledged the existence of a Yardmaster position at Hagerstown, albeit asserting that position was performing clerical duties that had been performed prior to the establishment of the Yardmaster position in January 2002.

It is undisputed that McCoy did not hold seniority in the Yardmaster craft, as the Organization submits. However, as the Carrier set forth in denial of the claim on appeal, Article 10 of the Yardmasters' Agreement provides that an employee, once qualified to work as a Yardmaster, must work as either a Substitute Yardmaster or regularly assigned Yardmaster for 120 days before seniority is established in the Yardmaster craft.

We have no alternative but to deny the claim because the contentions of the Claimant and the Organization depend entirely on undocumented and unsubstantiated assertion. As the Board has many times held in the past, assertions are not proof of a Rule violation.

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 20th day of November 2007.