

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29629  
Docket No. CL-30082  
93-3-91-3-615

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

(Transportation Communications  
(International Union  
PARTIES TO DISPUTE: (  
(Houston Belt & Terminal Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Union (GL-10633)  
that:

1. The Houston Belt & Terminal Railway Company violated the Agreement effective April 15, 1972, as amended, when it failed to rearrange clerical employe G. H. King to short vacancy on Job 219.
2. The Houston Belt & Terminal Railway Company shall be required to compensate clerical employe G. H. King \$101.35 per day commencing August 3, 1990, and continuing until the vacancy held by an employe, junior in seniority, concluded."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

The Organization alleges a violation of Rule 24 when Carrier filled a temporary vacancy without offering it in seniority order to the other employees working in the assigned area. The pertinent portion of the rule reads as follows:

"All temporary vacancies caused by regular assigned employes laying off and/or due to vacations will be filled by the rearrangement of the remaining regular assigned force in that office, with senior employes being given their choice."

The on-property record in this matter contains only the correspondence between the parties. There is no supporting evidence provided by either party. As a result, we are confronted by a record containing assertions and, to some extent, counter assertions.

In its correspondence, the Organization asserts the disputed vacancy arose because the incumbent was observing vacation. The Carrier denied that vacation was involved in any way and asserted, quite to the contrary, that the incumbent was removed from service for disciplinary reasons. Carrier also asserted that Rule 24 does not govern temporary vacancies resulting from disciplinary action. The Organization did not affirmatively dispute these Carrier assertions nor did it offer any proof to support its assertion that the vacancy was caused by vacation usage.


By long standing precedent, this Board has accepted unchallenged material fact as being adequate proof of the facts asserted. Such is the case here regarding Carrier's assertions about the disciplinary origin of the vacancy and the resulting application of Rule 24.

In disputes of this nature, it is well settled that the Organization has the burden of proving, by submission of probative evidence, that the Carrier has violated the Agreement. On the record before us, we find that the Organization has not satisfied this burden. Accordingly, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of April 1993.