

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30873
Docket No. CL-30459
95-3-92-3-258

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
(GL-10691) that:

(a) The Carrier (CSX) violated Rules 12, 35, 37, 42 and others of the Clerks' General Agreement when it blanked Position 082A-005, Bill Clerk, rate of \$120.20 daily, on March 29, 30, April 2, 3 and 4, 1990. Carrier's Bulletin #4273-B, and subsequently awarded position to P. J. Dwyer on April 5, 1990. A joint check of payroll accurate and true.

(b) The Carrier will now allow Claimant W. M. Mirasky five (5) days pay at the daily rate of \$120.20 each, in addition to all other earnings."

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 waived right of appearance at hearing thereon.

On the dates of March 20, 30, April 2, 3, and 4, 1990, there existed a vacancy on the position of Bill Clerk, #082A-005 in the Expenditure Billing Department in the Baltimore General Offices. That position had assigned hours 8:00 A.M. to 4:30 P.M., Monday through Friday. The vacancy stemmed from the incumbent of this

position bidding and being awarded a temporary vacancy on Position 082-006.

Claimant was also employed as a Bill Clerk, Monday through Friday, 8:00 A.M. to 4:30 P.M. in the Expenditure Billing Department in the Baltimore General Offices.

The Organization filed a claim when the vacant position was not filled and no one was compensated for the position. It argues that Carrier arbitrarily blanked the position in violation of various Agreement Rules.

We conclude that Rules 12, 24 and 37 are not apposite; Rule 42 is germane. It states:

"RULE 42 - WEEKLY GUARANTEE

(a) Except as provided in Section (b) of this rule, nothing herein shall be construed to permit the reduction in days for regularly assigned employees and/or positions covered by this Agreement below five (5) per week; except, however, the guarantee applying to a "position" will be waived on any given day on which the regular incumbent is absent, and only then when another employee is not available to cover the assignment."

However, this Rule does not support the Organization's position here. There is no evidence that Claimant was available to fill the vacancy. Claimant was unavailable because he was occupying a position with identical hours and days of assignment. Rule 42 specifically permits the position guarantee to be waived when the incumbent is absent from the position and no other employee is available to cover the assignment. This is precisely what happened here.

AWARD

Claim denied.

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O R D E R

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 10th day of May 1995.