

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31708
Docket No. CL-32128
96-3-94-3-535**

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: (
(The Lake Terminal Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11099) that:

1. Carrier violated the agreement when it temporarily assigned Clerk Paul Vargo to a management position on June 9, 17, 18, 23 and 30, 1993, and then failed to fill the resulting vacancy on his regular position;

2. Carrier shall now compensate the senior available off-duty employee, furloughed in preference, eight (8) hours' pay at the appropriate rate; i.e., straight time if furloughed or time and one-half if regularly assigned, for each of the above referred to dates.”

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.

On the five dates set forth in the claim (two of which were consecutive), Clerk P. Vargo was assigned to perform non-covered quality control work (a management position). On those dates, the Carrier did not fill Vargo's Revenue Clerk-Messenger position. The Carrier asserts that, in its opinion, no replacement was necessary for Vargo's position for the claim dates.

The relevant rules are as follows: Rule 3 provides for a 40 hour/5 day work week. Rule 11 states that "Nothing within this agreement shall be construed to permit the reduction of days for regularly assigned employees ... below five (5) per week [except for holidays] ..." Rule 25 states that short vacancies "... may be filled without advertising ..." Rule 42(b) governing bereavement leave states that "Any restrictions against blanking jobs ... will not be applicable when an employee is absent under this provision." Rule 58 governing sick leave states that "It will be optional with the Carrier to fill, partially fill, or blank a position of an employee who is absent and is receiving benefits under this rule." Finally, the jointly drafted Crew Caller's Manual states that "There is no provision in the Forty-Hour Work Week Agreement imposing an obligation upon the Carrier to fill a position of an employee laying off on his own accord."

It is clear from the above cited rules that the Carrier is not obligated to fill every vacant position. Even though restrictions exist, the Carrier has certain discretion to blank a vacant position. However, as the rules show, that discretion is not unfettered.

There is no specific rule governing this fact situation. There is no rule stating that the Carrier must fill the position vacated by an employee who is temporarily assigned to a non-covered position. The burden in this case is on the Organization. Because no specific rule governs the Carrier's action, this case becomes a dispute over the Carrier's exercise of a managerial prerogative. As with any case challenging the exercise of a managerial prerogative, for the Organization to prevail in this case it must show that the Carrier's exercise of its discretion to blank Vargo's position for the days he performed non-covered quality control work was an arbitrary action. The Organization has not made that showing. There is no evidence in the record developed on the property showing that Vargo's Clerk work unnecessarily piled up or was inordinately assigned to other employees while Vargo was gone or that no rational basis existed for blanking the sporadically vacated position. Without more, we have nothing to find that the Carrier's action of blanking the position was arbitrary. All we have is that the position was blanked. Absent a specific rule prohibiting the action (which does not exist), the Organization must show more than the fact that the position was blanked. The claim will therefore be denied for lack of proof of arbitrary action.

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 25th day of September 1996.