

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31902  
Docket No. CL-31980  
97-3-94-3-364

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Transportation Communications International Union  
**PARTIES TO DISPUTE:**(  
(National Railroad Passenger Corporation (AMTRAK)

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the TCU (NEC-1139) (GL-11058) that:

(a) The Carrier violated the Rules Agreement effective September 1, 1976, as amended and revised, particularly Rule 1-B-1 and 2-A-5 when on April 13, 1992, Claimant E. Dixon was refused an exercise of seniority to an Usher Position.

(b) Mr. Dixon is senior and should have been given time to qualify as prescribed by our Rules Agreement and past practice on Usher positions.

(c) Claimant Dixon now be allowed 8 hours per day 5 days per week and any overtime worked by junior Ushers beginning April 13, 1992, and to continue each and every day until Mr. Dixon is placed on Usher position.

(d) Claim filed in accordance with Rule 7-B-1 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 waived right of appearance at hearing thereon.

On March 12, 1992, the Claimant was disqualified from the position of Usher/Gateman, a position he had held since February 10, 1992. The circumstances of this disqualification are reviewed in Third Division Award 31901.

On April 13, 1992, the Claimant again sought to displace on an Usher/Gateman position. The Carrier refused to permit him to do so. The Organization (which had disputed the previous disqualification) argued that the Claimant was entitled to the Usher/Gateman position on April 13, 1992 either (a) because he was already qualified for the position (but denial Award 31901 disposes of this argument); or because he was entitled to such opportunity under Rule 1-B-1(a), which puts employees "in line" for promotion, and Rule 2-A-5(a), which offers employees 30 days in which to qualify.

The Carrier reasonably states that there is nothing to believe the Claimant has achieved greater capacity to qualify within the single month since his previous disqualification. The Board concurs that the placement of the Claimant onto the Usher/Gateman position would have been an exercise in futility.

#### **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 4th day of March 1997.