

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32885
Docket No. CL-33650
98-3-97-3-131**

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

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11691) that:

This claim is on behalf of Mr. James Avjian, Clerk, at North Billerica , Massachusetts.

Mr. Avjian, who owns Revenue Car Accounting, Central Data Processing, located at North Billerica, Massachusetts, has been performing work of a Head Clerk - Miscellaneous (IC), owned by Ms. Georgette Builbeault, who has been out sick further notice.

Carrier violated Rule 16 of the Agreement when it failed to pay Mr. Avjian at the higher rate while occupying the position.

Claim is for the difference in pay of \$14.21 (which should have been the rate at which Mr. Avjian was paid) v. 13.13 (which is the rate Mr. Avjian normally earns and which was the rate at which he was paid while occupying the higher position). This claim covers the following dates: December 8, 1994 to February 27, 1995 for each day Mr. Avjian covered this position.

Claim is valid and must be paid.”

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 facts in this case are not in dispute. On December 8, 1994 the Claimant began working the position of Head Clerk - Miscellaneous (IC) while the incumbent was off sick. On February 27, 1995 the Carrier bulletined the position. On March 18, 1995 the Organization filed the instant claim on behalf of the Claimant.

The Carrier has taken the position that the claim is barred by the time limit of Rule 44.

The Organization argues that its claim was timely filed in accordance with Rule 44(d) which reads:

“(d) A claim may be filed at any time for an alleged continuing violation of any Agreement and all rights of the claimant or claimants involved thereby shall, under this Rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. . . .”

The Carrier's position is not well founded. However, the Organization can only claim monies for the 60 days prior to the date of its initial claim. Therefore, the claim is sustained for the period January 18 up to February 27, 1995.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 21st day of October 1998.