

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 33262  
Docket No. CL-33820  
99-3-97-3-313

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

(Transportation Communications International Union  
**PARTIES TO DISPUTE:** (  
(Delaware & Hudson Railway Company, Inc.

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-11738) that:

K. E. Kramer claims one day’s pay at time and one-half for Friday, March 22, 1996, on account of not being called to work the 2300-0700 Clerks Position.

The incumbent of the position A. Contro was moved to the Yardmasters job by the Carrier and the position was blanked. Duties of the job were performed in Binghamton. Both Buffalo extra clerks were marked off.”

**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 March 22, 1996 the Carrier assigned the incumbent of the 2300-0700 Clerk's Position at Buffalo, New York, to a Yardmaster position at that location and blanked the Clerk's position. The Carrier moved the work of the 2300-0700 Clerk's Position to Binghamton, New York, on that date. Both extra Clerks at Buffalo were marked off. Claimant was the senior available regular employee to fill the position. If he had done so it would have been at the overtime rate. The claim in this case followed.

The Carrier denied the claim. The Organization appealed the denial to the highest officer of the Carrier designated to hear such disputes who denied the appeal. The dispute remains unresolved, and it is before the Board for final and binding determination.

The Organization bases the claim upon Rule 5 (Overtime) of the applicable schedule Agreement and Article III, Section 1 of the February 7, 1965 National Job Stabilization Agreement (February 7 Agreement). The Organization argues that Claimant was entitled to be called for the Clerk's position at Buffalo on the claim date because the Carrier could not fill the position at other than the overtime rate. The Organization also argues that the Carrier's transfer of the duties of the position to Binghamton, New York, brings the matter within the scope of Article III, Section 1 of the February 7 Agreement and that the Carrier did not comply with the terms of that Agreement when it made the transfer. Pointing to the amount of work performed by the Clerks at Binghamton on the claim date, the Organization maintains that the work of the Buffalo clerical position on the claim date was substantial. The Organization cites considerable authority in support of its position.

The Carrier argues that nothing in Rule 5 or Article III, Section 1 prohibits the Carrier from blanking a position. Moreover, urges the Carrier, nothing in Rule 5 supports the claim in this case, and Article III, Section 1 is intended to apply to permanent work transfers only and not to temporary transfers such as involved in the instant case.

We believe the Carrier has the stronger position in this case.

The Carrier's point is well taken that nothing in the Agreement provisions relied upon by the Organization prevents the Carrier from blanking a position. Inasmuch as the Carrier retained such authority, once it chose to blank the position the consequences flowing therefrom cannot be considered violative of either Rule 5 or Article III, Section

1. Additionally, the arbitral authority relied upon by the Organization appears to involve Rules materially different from those relied upon by the Organization in this case. The record evidence cited by the Organization with respect to the work performed by Binghamton Clerks on the claim date does not distinguish between work they ordinarily would have performed and the work of the Clerk's position at Buffalo transferred to Binghamton on that date.

In view of the foregoing we must conclude that the claim in this case has no merit.

**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 6th day of May 1999.