

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33502
Docket No. CL-34841
99-3-98-3-553**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12119) that:

(a) This Claim is filed on behalf of Mr. Richard Knox, TSR, North Billerica, Massachusetts. This Claim is for two weeks, July 21, 1997, through July 25, 1997, and July 28, 1997, through August 1, 1997, at the rate of eight (8) hours at time and one half, (Two days at \$664.40, plus car mileage: 91 miles one way, and two roundtrip 5 day, \$245.70).

(b) The Carrier violated the Agreement when it refused Mr. Knox to cover 0700 Clerk's position at East Deerfield Yard, after Mr. Knox requested to cover the two week vacancy created by Mr. B. Fowler's vacation.

(c) The Rules violated are 11.1, 11.4, 21.1, 21.3 and all other Rules of this Agreement.

(d) This 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.

Claimant made application to fill the vacation vacancy of the 0700 Clerk position at East Deerfield Yard in accordance with Rule 21 which reads:

"Rule 21. Filling Temporary Positions

21.1 When the Carrier elects to fill vacancies of 5 working days or more but less than 30 working days duration, including vacation absences of 5 working days or more, the senior qualified Employee making written application will be so assigned, provided undue impairment is not caused to the service (e.g., the inability to fill behind the senior Employee making application).

21.3 An Employee granted a temporary position must cover the position, for the duration of the vacancy or the absence and will assume the rest days of the position."

Claimant was not used to fill the vacancy and the Organization has progressed this claim.

The Carrier has denied this claim on the basis that it had no qualified employee to fill the Claimant's position, if it allowed the Claimant to work the vacation vacancy.

The Carrier's position is well taken. First, there is no requirement to fill the vacancy. Second, if it elects to fill a vacancy, then it is not required to use the senior applicant, if it cannot fill that vacancy.

The Carrier has taken the position that it had no one to fill the Claimant's position. The Organization in the handling of this claim does not dispute the Carrier's argument.

The Agreement was not violated.

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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 22nd day of September 1999.