

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33618
Docket No. CL-33656
99-3-97-3-139**

The Third Division consisted of the regular members and in addition Referee John B. LaRocco 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-11699)
that:

Claim is filed for Ms. Ann Tucker, Clerk, North Billerica, Massachusetts, for difference in rate of \$12.27 per hour she is currently earning and \$13.54 which she was earning in the Car Utilization position she was displaced off of. Claim commences August 31, 1995, and is for each and every day until the situation is corrected.

Carrier violated the Agreement when it allowed a former Maine Central employe to use system seniority rights and displace Ms. Tucker illegally.

Rules violated are 1, 2, 3, 4, 7, 10, 11, 13, 33, 44 and 66.”

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.

In May 1995, Claimant held a Car Utilization position with an hourly rate of \$13.54. According to the GO-5 Seniority Roster (Consolidated General Office) Claimant held both a department seniority date and a system-wide seniority date of July 27, 1974.

In 1993, Clerk Avjian bid on and was awarded a position in the Carrier's Accounting and Finance Department. As a result of attaining this position, Clerk Avjian established seniority in the Accounting and Finance Department (Seniority Roster GO-2) as of June 4, 1993. The published 1994 and 1995 GO-2 Seniority Rosters also showed Clerk Avjian with a Carrier or system seniority date of May 19, 1971. Subsequent to the publication of the 1994 and 1995 GO-2 Seniority Rosters, Claimant did not protest the seniority standings. Indeed, there was not any protest resulting in a change in the roster standings. Rule 4 provides that the seniority roster becomes accurate and permanent if no substantiated protest is received within 60 days of the date the rosters are published. The same rosters show that Clerk Avjian held the least amount of departmental seniority in the Department covered by the GO-2 Seniority Roster.

In May 1995, a senior employee displaced Clerk Avjian. Since he was the most junior employee on the GO-2 roster, Clerk Avjian was unable to displace anyone within his department. Next, Clerk Avjian opted to displace Claimant.

The Organization alleges that Clerk Avjian's displacement was improper. As a result of the displacement, Claimant was forced to displace another clerical employee from a Clerk-Steno position which held an hourly rate of \$12.27. Claimant seeks the difference in compensation between the position from which she was displaced and the position to which she exercised her seniority.

On July 29, 1975, the parties entered into the BRAC-5 Agreement. Section IIA of the BRAC-5 Agreement reads:

"Any employee of any seniority district having displacement rights, who has exhausted seniority and who is unable to hold a position within the confines of his respective seniority district either because of lack of fitness and ability or because of the absence of the junior employee in the respective seniority district, shall have the right to exercise displacement rights,

based on necessary fitness and ability, over any employee with less total Company seniority who is occupying a position coming within the scope and subject to the exercise of seniority rules of the BRAC Rules Agreement. Such exercise of seniority must be made within twenty-five (25) days of the date of actual abolishment or displacement.”

The plain and unambiguous language of Section IIA of BRAC-5 permits a clerical employee to use Carrier wide seniority in a displacement situation provided the clerical employee has first exhausted the employee’s departmental seniority. Inasmuch as Clerk Avjian was unable to displace anyone within his department, Clerk Avjian appropriately resorted to his Carrier wide seniority. Clerk Avjian’s seniority date was May 19, 1971, while Claimant’s seniority date was July 26, 1974. As such, Clerk Avjian was senior to Claimant. Thus, the displacement was proper.

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 16th day of November 1999.