

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36391
Docket No. CL-36299
03-3-00-3-593**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation (Conrail)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12642) that:

Claim is being filed on behalf of Claimant M. J. McNamara employee #008747 that:

- (a) The Carrier violated the Clerks’ Rules Agreement effective July 1, 1979, particularly Rules 1, 5, 24, 40 and other rules when it abolished numerous agreement Customer Account Auditor, Customer Area Account Auditor and Customer System Account Auditor Collector positions and permitted and allowed agreement collection and clerical duties that were performed by the incumbents of these positions and their predecessors to be assigned to Gerry Pancavage who was hired as a consultant through OSI Collections Systems at the request of the Conrail Core Collections Department.**

Gerry Pancavage’s assignment is to work the position of Collector to specifically perform the above mentioned agreement duties on a regularly scheduled daily basis in a Conrail office with Conrail equipment and supplies under the direction of Conrail Collection Department supervision for a period of at least one (1) year.

- (b) Claimant M. J. McNamara should now be allowed eight (8) hours pay at the pro-rata rate of his former agreement Customer Account Auditor position or his EMR whichever is higher commencing 8/2/99 and continuing for each and every day thereon**

after (Including time employee is off work on furlough status) until this violation is corrected.

- (c) Claimant should also be reimbursed for all benefits lost as a result of the time he is off work on account of this violation.
- (d) Had the Carrier properly bulletined and posted a position with the agreement clerical duties now being performed by Gerry Pancavage on the newly requested and created OSI Consultant /Collection position the Claimant, M. J. McNamara who was and still is qualified, available and subject to recall would have been able to return to active duty from furlough to work this position.
- (e) This claim has been presented in accordance with Rule 45 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 were given due notice of hearing thereon.

Prior to 1999, the Claimant held a PAD position as a Customer Account Auditor in Conrail's Collection Department in Philadelphia, Pennsylvania. Pursuant to Article H Section 1 of the November 2, 1998 Implementing Agreement, the Carrier issued a Notice to the employees of Seniority District 26 concerning the transfer of work from Conrail to either NS or CSX locations. A "rundown" was scheduled for December 9 - 11, 1998 for the employees of Seniority District 26 to "make a selection" of available positions upon the split of Conrail on June 1, 1999. The Claimant declined

to select any position but he continued working until July 14, 1999, when he was furloughed, pursuant to Section 3(a) of the November 2, 1998 Implementing Agreement.

Except for the named Claimant, this case is virtually indistinguishable from a companion case, which the Board dismissed for failure of proof in Third Division Award 36390. For the same reasons, this claim also is dismissed.

AWARD

Claim dismissed.

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 18th day of February 2003.