

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38060
Docket No. CL-38509
07-3-04-3-513

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the TCU (GL-13060) that:

Claim No. 1

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for March 29, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 2

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for March 30, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 3

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for March 31, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 4

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 1, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 5

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 2, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 6

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. **Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 3, 2003.**
- c. **Claimant was qualified and available and should have been called to work this position.**
- d. **This claim has been presented in accordance with Rule 45 and should be allowed.**

Claim No. 7

- a. **The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.**
- b. **Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 4, 2003.**
- c. **Claimant was qualified and available and should have been called to work this position.**

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 8

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 5, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 9

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 6, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 10

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 7, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 11

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 8, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 12

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 9, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 13

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 10, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 14

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 11, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 15

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 12, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 16

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 13, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 17

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 14, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 18

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 15, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 19

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 16, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 20

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 17, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 21

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. **Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 18, 2003.**
- c. **Claimant was qualified and available and should have been called to work this position.**
- d. **This claim has been presented in accordance with Rule 45 and should be allowed.**

Claim No. 22

- a. **The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.**
- b. **Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 19, 2003.**
- c. **Claimant was qualified and available and should have been called to work this position.**

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 23

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 20, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 24

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 21, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 25

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 22, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 26

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 23, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 27

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 24, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 28

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 25, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 29

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 26, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 30

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 27, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 31

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 28, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 32

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 29, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 33

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for April 30, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 34

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for May 1, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 35

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for May 2, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 36

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for May 3, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 37

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for May 4, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 38

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for May 5, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 39

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for May 6, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 40

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for May 7, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 41

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for May 8, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 42

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked

on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.

- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for May 9, 2003.
- c. Claimant was qualified and available and should have been called to work this position.
- d. This claim has been presented in accordance with Rule 45 and should be allowed.

Claim No. 43

- a. The Carrier violated the TCU/CSXT North Clerical Rules Agreement effective June 1, 1999, particularly, Rules 18, 24, 40 and other Rules, when it failed to allow the claimant Niedziela to continue on his displacement of Position #R-5, Stevedore at the Selkirk Auto Terminal. Claimant was properly displaced by senior employee S. Pascuzzi on Position #4b02-999, Wednesday, March 26, 2003. Claimant displaced and worked on the Stevedore position on Friday March 28, 2003. Senior employee Pascuzzi worked on the displaced position 4b02-999 on Wednesday March 26, 2003 and had properly displaced Claimant in accordance with the rules.
- b. Claimant Niedziela now be allowed eight (8) hours pay based on his EMR or WGR, whichever is greater and (0) hours punitive pay, for May 10, 2003.
- c. Claimant was qualified and available and should have been called to work this position.

- d. 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.

The incident precipitating these 43 claims arose on March 26, 2003. On that date S. Pascucci returned from a personal illness and attempted to displace Claimant D. Niedziela. The Claimant was assigned to Guaranteed Extra Clerk Position No. 4B02-999 in Selkirk, New York. The Claimant then attempted to displace to Selkirk Auto Site Stevedore Position No. 4B25-R05, Relief No. 5. On March 28, 2003, he began qualifying with the incumbent of Position No. 4B25-R05. Also on that date, the Claimant was notified that he had not been properly displaced, because Pascucci was not medically qualified to perform the duties of Position No. 4B02-999, i.e., the Claimant's original position on the Guaranteed Extra Board.

The Organization filed the above claims on May 19, 2003. In those claims (reproduced above) the Organization contended that the Carrier violated the Agreement, particularly Rules 18, 24, and 40, when it failed to allow the Claimant to continue on his displacement to Position No. 4B25-R05. It stated as well that Pascucci, who obviously was senior to the Claimant, had worked on displaced Position No. 4B02-999, and insisted that he had thus properly displaced the Claimant in accordance with the Rules.

The Carrier responded to the claims on May 29, 2003. In its response, the Carrier noted that Pascucci never actually worked the Claimant's position, because the local supervisor was notified of Pascucci's medical disqualification. However, because the Carrier was unable to notify Pascucci of his disqualification in a timely fashion, he reported for work. The Carrier notes that it paid him for a call, but he was not allowed to work the position for which he reported.

The Carrier pointed out as well in a follow-up letter that Rule 18(f) of the Agreement provided that "an employee will not be considered as having been displaced until the individual exercising seniority actually begins work on the position." Thus, the Carrier asserted, no displacement occurred and no claimed compensation is warranted.

The claims were subsequently progressed according to the Agreement between the parties, including conferencing on the property. Thus they are properly before the Board for resolution.

The Board carefully reviewed the positions of both parties, and the relevant Agreement provisions. The Organization's argument rests, in essence, on the theory that a displacement occurs as soon as the more senior employee has attempted to displace a junior one, and that, other circumstances notwithstanding, immediate disqualification of a bumping employee, in this case even before he could work any time on the position, does not negate the displacement attempt. According to the Organization's view, the Claimant should have been allowed to remain on Position No. 4B25-R05 irrespective of Pascucci's immediate medical disqualification.

In short, the Organization proposes that because of the lack of speed of communication between the Medical Department and Pascucci's local supervisor, the Carrier should be forced to leave Claimant's position blank and allow him to remain on the position to which he, in turn, displaced. The Organization's position is in direct contravention of Rule 18 (f) of the Agreement between the parties. It is asking the Carrier to disregard that language, which is clear and unambiguous, and leave the Claimant on Position No. 4B25-R05. The Carrier has no authority to do so, unless an exception to that clear and unambiguous language is negotiated and agreed to by the parties. To date there is no evidence in the record that they have done so.

Accordingly, the Board finds no basis upon which to sustain the instant claims.

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 25th day of January 2007.