

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Referee Tedford E. Schoonover

Award Number 4033  
Docket Number 4034

PARTIES James G. Gaines  
TO  
DISPUTE: Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of James G. Gaines, Communications Installer, 7991 Service Road Florence, Kentucky 41042, against L & N Railroad. The claim is for a higher rate of pay 9/22/80 through 9/26/80 and on 12/16/80, in accordance with Rule 24 of the Agreement.

OPINION OF BOARD: Rule 24 of the Agreement between the parties follows:

"When an employee is required to fill the vacancy of another employe receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the vacancy of another employe receiving a lower rate pay rate, his rate will not be changed."

Carrier denied the claim on the basis claimant was not required to fill the vacancy of Chief Communication Installer at Howell Yards. It is also stated that the position was vacant and advertised on June 27, 1980 but Claimant failed to bid on same. Thereafter, Carrier hired a new employee to fill the position effective September 15, 1980. The newly hired employee, M. E. Reininga, holds system seniority and during the week of the Claim while occupying the position of Chief Communication Installer, he was sent to Louisville for training.

During the period of the Claim Claimant was not required to fill Chief's job but continued to perform his normal duties. Claimant offers no evidence that he was ordered or required by any proper authority to fill the Chief's job. For lack of evidence in support of the Claim it must be rejected for failure to meet the burden of **proof**.

## FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employes involved in this dispute are respectively Carrier and Employe 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.

The parties to said dispute were given due notice of hearing thereon.

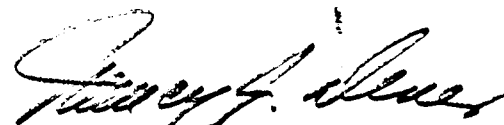
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:



Nancy J. Dever  
Acting Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1983.