

Award No. 10410
Docket No. CL-9238

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. Carrier violated the provisions and intent of the Clerks' Rules Agreement when the Assistant to Vice President, the highest officer to whom appeals may be made, refused to comply with the request of the General Chairman and grant employe R. Stachowiak a hearing on appeal from the decision rendered by the General Superintendent.

2. Carrier also violated the August 21, 1954 Agreement when it failed to reply to the Organization's request for reinstatement, with pay for time lost, for employe R. Stachowiak within 60 days from the date same was filed.

3. Employe R. Stachowiak be returned to service on Yard Clerk Position #70 at Muskego Yard, Milwaukee, Wisconsin with all rights unimpaired and be compensated for all loss suffered from October 10th, 1955 until his return.

EMPLOYEES' STATEMENT OF FACTS: Because of the close relationship which this case has with another case also before the Board involving the same employe, the same position and the same period of time, but not yet docketed, the Employees believe that it is necessary, if the Board members are to have a correct and complete picture as to what happened to claimant Stachowiak, to relate in the "Statement of Facts" in connection with this case, the events and circumstances as they existed and in the order of their occurrence even though to do so requires including some of the facts already before the Board in connection with the other case. On that presumption, the Employees show the facts in the present case as follows:

Employe R. Stachowiak was regularly assigned to Yard Clerk Position No. 70 at Muskego Yard, Milwaukee, Wisconsin.

Aside from the claim quoted under the heading "Statement of Claim" in Carrier's Ex Parte Submission in Docket CL-9113 and aside from the request for appeal hearing, as embodied in Mr. Gilligan's letter of November 22, 1955 quoted in the Carrier's Statement of Facts in the instant case, we emphatically submit there has been no claim or question or issue presented, appealed or in any way progressed on the property of this Carrier by or in behalf of employe Stachowiak. Items 1 and 2 of the claim last quoted above have never been presented to the Carrier and as we have explained, Item 3 is part of the claim covered by Docket CL-9113.

In the opinion of the Carrier there is not the slightest justification for the issue covered by the instant dispute being submitted to your Honorable Board and we trust we have explained the circumstances and our position sufficient to permit this claim being dismissed as we feel it should be and so respectfully request.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimant was regularly assigned to Yard Clerk position No. 70 at Muskego Yard, Milwaukee, Wisconsin. On September 27, 1955, Assistant Superintendent, R. W. Graves, addressed the following letter to the claimant:

"Mr. Ray Stachowiak:

"Charges are hereby preferred against you for alleged improper handling of your work and responsibility for delay to crews on September 18, 1955 as follows:

"7:00 A. M.	Transfer Giertler 1 hour
"7:30 A. M.	Transfer Bigelow 1 hour 5 minutes
"7:45 A. M.	Transfer McKeown 1 hour 15 minutes
"7:55 A. M.	Transfer Peterson 55 minutes
"7:50 A. M.	Transfer Kogelman 1 hour 15 minutes
"7:00 A. M.	Dock Transfer Stuebing 1 hour 35 minutes

"Also on September 25th there was no crew for the 7:00 A. M. bridge job and the P. M. Transfer was delayed 1 hour and 20 minutes on account of a late call.

"Formal investigation will be conducted in the office of Superintendent, Room 201, Muskego Yard, Milwaukee, Wisconsin, at 10:00 A. M. Friday, September 30, 1955 to develop the facts, circumstances and responsibility in connection with these delays and apparent improper calling.

"Please arrange to be present. You may have representation as provided in the current schedule if you so desire."

An investigation was held on September 30, 1955, at 10:00 A. M. During the investigation proceedings the parties agreed to recess to permit the carrier to produce records requested by the employe representative. The parties, however, could not at that time agree upon a date for resumption of this investigation and it was finally agreed that the parties would try within the next two weeks to get together on a mutually satisfactory date. In the meantime, the grievant remained in the service of the carrier.

While the investigation was in recess, the Assistant Superintendent under date of October 5, 1955, served another notice on the grievant charging him with being asleep while assigned as Yard Caller on the night of October 3, and during the early morning of October 4, 1955.

The investigation was resumed at 9:30 A. M. on October 15, 1955.

The carrier rendered no decision following the investigation on the charge of being asleep; however, by letter dated October 20, 1955, the carrier terminated the grievant's service with the carrier.

The letter of October 20, 1955 reads as follows:

"Mr. Ray Stachowiak:
Route 2, Box 268
Waterford, Wisconsin

"This is to advise you that your services with the C.M.St.P&PRR Co. are hereby terminated and your name removed from the seniority list effective at once for failure to properly call crews while assigned to position of 3rd shift Caller the early morning of September 18th and September 25, 1955, as developed at formal investigation held at Muskego Yard and which was completed on Saturday, October 15, 1955.

"Please turn in any company property in your possession.

/s/ J. J. DOMBROWSKI
Superintendent Terminals"

Vice General Chairman, H. C. Hopper wrote General Superintendent L. W. Palmquist under date of November 3, 1955, appealing from the decision of the Superintendent and asking the General Superintendent to hold a fair and impartial hearing in accordance with the provisions of Rule 22(c) of the Clerk's Agreement.

On November 7, 1955 Palmquist wrote to Hopper and in that letter he stated:

"In accordance with request contained in your letter arrangements have been made to hold conference in my office 10:00 A. M. Friday, November 11, 1955."

On November 10, 1955 Palmquist advised Hopper as follows:

"Dear Mr. Hopper:

"With reference to my letter of Nov. 7th, your File A-37, in the case of Ray Stachowiak, and time and date of 10:00 A. M. Friday, Nov. 11th being set for conference in my office.

"I am sorry I must of necessity postpone this hearing as I will be out of the city on Nov. 11th but expect to be available to hold such conference on Monday, Nov. 14th at 9:30 A. M. in my office."

The letters of Palmquist to Hopper suggested that a conference would be held in his office on November 14. Rule 22(c) requires that an employe dissatisfied with a decision may have a fair and impartial hearing before the

next higher officer. However, the employees state in their submission "accordingly the hearing was held in Mr. Palmquist's office on November 14, 1955." The letter of Palmquist to the claimant dated November 18, 1955, states "Said further hearing was conducted in this office on Monday, November 14, 1955, * * *".

The Board finds that a proper hearing was held "under Rule 22(c)."

On November 22, 1955, the General Chairman addressed a letter to the Assistant Vice President, Mr. C. P. Downing, which reads as follows:

"Mr. C. P. Downing
Assistant to Vice President
C. M. St. P. & P. R.R. Co.
Chicago, Illinois

Dear Sir:

"In accordance with the provisions of Clerks' Current Agreement, Rule 22(d), it is requested that you arrange to conduct a hearing in behalf of employe Ray Stachowiak on appeal from decision rendered by General Superintendent L. W. Palmquist in connection with hearing conducted in his office on Monday, November 14, 1955.

Yours very truly,

/s/ H. V. Gilligan
General Chairman"

On November 22, 1955, Mr. Dombrowski wrote employe Stachowiak advising of his reinstatement with restricted seniority which read as follows:

"Mr. R. Stachowiak
Route 2, Box 268
Waterford, Wisconsin

"In connection with your dismissal from the service of the CMStP&P Railway Company for failure to properly call crews while assigned to position of third shift Caller the early morning of September 18th and September 25th, 1955.

"You are hereby reinstated as a clerk with the understanding that you are not to work on any road or yard calling assignments.

/s/ J. J. Dombrowski
Superintendent Terminals"

On November 25, 1955 Mr. Downing replied to the General Chairman's letter of the 22nd as follows:

"Mr. H. V. Gilligan
General Chairman - BRC
Room 518 - 108 W. Wells
Milwaukee 3, Wisconsin

"Dear Sir:

"Reference is made to your letter of November 22, 1955 in which you ask for a hearing in behalf of employe Ray Stachowiak.

"I understand in this case the original hearing was held by Superintendent J. J. Dombrowski and then an appeal hearing was held by the General Superintendent. If that is the case, I do not feel Rule 22 provides for any further appeal hearings.

"I might add, in case you do not yet have the information, Mr. Dombrowski notified Mr. Stachowiak on November 22 that he would be reinstated with the understanding that he could not work on any road or yard calling assignment.

Very truly yours,

/s/ C. P. Downing
Assistant to Vice President"

The General Chairman replied to Mr. Downing's letter under date of December 2, 1955 as follows:

"In connection with the request for an appeal hearing in behalf of employe R. Stachowiak.

"An investigation was held by Supt. J. J. Dombrowski in this case and inasmuch as the employe was dissatisfied with his decision a request was made for a hearing before the next higher officer in accordance with the provisions of Rule 22(c), and this hearing was held by General Superintendent L. W. Palmquist.

"Therefore, I am of the opinion that our request for an appeal hearing, in line with provisions of Rule 22(d) is in order.

On December 2, 1955 Vice Chairman H. C. Hopper wrote to Superintendent Dombrowski as follows:

"Mr. J. J. Dombrowski, Supt.
C. M. St. P. & P. R.R. Co.
Milwaukee 3, Wisconsin

"Dear Sir:

"With reference to your letter of November 22nd to Mr. R. Stachowiak advising him as follows:

'In connection with your dismissal from the service of the CMStP&P Railway Company for failure to properly call crews while assigned to position of third shift Caller the early morning of September 18th and September 25th, 1955.

'You are hereby reinstated as a clerk with the understanding that you are not to work on any road or yard calling assignments.'

"On November 14th, 1955 prior to the hearing which was scheduled for 9:30 A. M. in General Superintendent Palmquist's office, Mr. Palmquist and you made an identical proposal as that contained in the above quoted letter. At that time the proposal was rejected and the hearing was conducted by General Superintendent Palmquist.

instatement of Mr. Stachowiak without agreement and the restriction of his seniority is not in order and is hereby protested.

"It is the request of the Organization that employe R. Stachowiak be reinstated on third shift Yard Caller Position No. 70 at Muskego Yard with all rights unimpaired and compensated for all loss suffered from October 10, 1955 until the violation is corrected.

Very truly yours,

/s/ H. C. Hopper
Vice General Chairman"

When the Assistant to Vice President failed to hold a hearing on appeal, the General Chairman wrote that officer on January 4, 1956, as follows:

"Mr. C. P. Downing
Asst. to Vice President
C. M. St. P. & P. R.R. Co.
Chicago, Illinois

"Dear Sir:

"Please be referred to my letters of November 22nd and December 2, 1955 in connection with request for an appeal hearing in behalf of employe R. Stachowiak in accordance with the provisions of Rule 22(d).

"Inasmuch as the time limitations for holding this hearing have passed and you have not complied with the purpose and intent of Rule 22(d) I assume that you agree that the rules of the agreement have not been complied with in this case and the dismissal of employe Stachowiak was unwarranted.

"In view of these facts it is respectfully requested that employe R. Stachowiak be returned to service on Yard Caller Position No. 70 at Muskego Yard with all rights unimpaired and compensated for all loss suffered from October 10, 1955 until his return.

Yours very truly,

/s/ H. V. Gilligan
General Chairman"

In the Vice General Chairman's letter to Mr. Dombrowski dated December 2, and the General Chairman's letter to Mr. Downing dated January 4, 1956, request was made for employe Stachowiak's return to service on Yard Caller Position No. 70 at Muskego Yard with all rights unimpaired and compensated for all loss suffered from October 10, 1955. Mr. Dombrowski did not decline the Vice General Chairman's request for reinstatement and compensation for employe Stachowiak as contained in his letter of December 2, nor did Mr. Downing decline the General Chairman's similar request made on January 4, 1956. However, on January 27, 1956 the Assistant to Vice President wrote to the General Chairman and in that letter stated:

"On November 22, 1955, Mr. Dombrowski wrote Mr. Stanowiak to the effect that he was reinstated to service with the understanding

that his services were restricted in connection with road or yard calling assignments. Considering the responsibility of Mr. Stachowiak as developed in the investigation which began on September 30, and was concluded on October 15, I feel that his dismissal from service was entirely justified and any loss of earnings subsequent to November 22, 1955 on the part of Mr. Stachowiak is entirely his responsibility.

"Hoping that this discipline assessed in this case has served its purpose and that we can expect an improved performance on the part of Mr. Stachowiak if he were to return to a calling assignment, I am willing that he be given another chance in connection therewith and you may therefore accept that I am willing he be reinstated without restriction on a leniency basis effective at once.

"The claim for compensation subsequent to October 10, 1955 is respectfully declined."

Upon receipt of the above letter, the General Chairman called the office of the Assistant to Vice President on January 30, 1956 to inquire as to the meaning of the statement: "* * * reinstated without restriction on a leniency basis * * *", and was advised that employe Stachowiak was being reinstated with seniority unimpaired and that he could go back to the job he had if he wanted it.

The General Chairman then advised the carrier that he was agreeable to the reinstatement and thereby stop the accumulation of any monetary claim, but that he did not agree that the man was being reinstated on a leniency basis or that the monetary claim was in any way waived by this reinstatement. It was then understood between the parties that the claimant would be returned with seniority unimpaired thereby stopping the accumulation of monetary claim; and that the question of payment for time lost beginning October 10th could be handled further.

It is the contention of the employes that under the provisions of Rule 22(d) the Assistant to Vice President, who was the next higher officer to the General Superintendent, was required to grant employe Stachowiak a hearing when requested by the General Chairman. On his appeal from the decision made by General Superintendent Palmquist, the carrier when it failed to grant such a hearing within the time limit provided in Rule 22(d) or to make other arrangements mutually satisfactory to both parties was in violation of the specific provisions of Rule 22(d) and the spirit and intent of the agreement.

In Award 7021 this Division stated:

"* * * Rule 22 explicitly guarantees the right of appeal 'to each succeeding higher officer up to and including the highest officer designated by the carrier to whom appeals may be made.' What this rule means and requires is independent consideration and decision at each successive appellate step."

In Award 9832 which involved the same Organization and the same Carrier it was stated:

"* * * The language of the parties agreement provides for two appeal steps. It assures the employe who is being disciplined 'a fair and impartial hearing before the next higher officer'. The carrier cannot unilaterally deny the employe independent consideration and

decision of each successive appellate step without violating the whole purpose and intent of Rule 22. The perfunctory treatment given to this case by General Superintendent Fhea and the flat refusal of the Assistant to the Vice President, S. W. Amore to consider the matter on the merits, leaves no alternative but to conclude the claimant's rights under the agreement have been violated."

When C. P. Downing, Assistant to Vice President, refused to hear an appeal under the provisions of Rule 22(d) the carrier violated the agreement in this case. Therefore, the claim will be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained in accordance with the opinion from October 10, 1955 until and including January 27, 1956, this being the date that the Carrier was willing to reinstate the claimant without compensation and without restrictions.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of March 1962.