

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

MONON RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5552) that:

(1) The Carrier violated the Clerks' Agreement on February 7, 1963, when it disqualified Mr. R. E. Taylor from the position of Accountant at the Belt Junction office, Indianapolis, Indiana, without first conducting a hearing as requested by Mr. Taylor.

(2) The Carrier further violated the Clerks' Agreement when it failed and refused to hold an unjust treatment investigation (when properly requested) as provided in Rule 34 until after such time as it had dismissed Agent J. R. Wootan, the instigator of the unjust treatment.

(3) Carrier's action in disqualifying Mr. Taylor from the position of Accountant was without just cause, was arbitrary and capricious.

(4) R. E. Taylor be paid one day for February 11, 1963 and each succeeding day that the position worked while he was held off the position until May 1, 1963.

EMPLOYEES' STATEMENT OF FACTS: Employee R. E. Taylor holds a clerical seniority date of September 18, 1944 in Seniority District No. 2 which district covers all clerical positions at the location on the Monon.

For many years prior to December 18, 1962, Employee Taylor occupied the position of Storekeeper in the Stores Department, Seniority District No. 2 at Indianapolis, Indiana.

Effective December 18, 1962, the position of Storekeeper at that location was abolished (Employees' Exhibit A) and Employee Taylor subsequently exercised his displacement rights (Employees' Exhibit B) on the position of Accountant at this same location. After taking some vacation time, due him, and also posting on the position, he started working on the position January 23, 1963.

OPINION OF BOARD: The position of Storekeeper in the Stores Department, Seniority District No. 2 at Indianapolis, Indiana was abolished December 18, 1962. The incumbent of that position, R. E. Taylor, exercised his displacement rights on the position of Accountant at the same location. He commenced work on the new job January 23, 1963.

J. R. Wootan, acting Supervisor Operations, wrote Taylor on Thursday, February 7, 1963 that he was disqualified. Taylor worked Friday, February 8, 1963, and learned of his disqualification when he returned home from work on that day.

Claimant wrote a letter on Sunday, February 10, 1963, requesting a hearing under Rule 16 (b) of the agreement. The Carrier granted the hearing on February 18, 1963 and set the same for February 21, 1963. It was subsequently continued until February 26, 1963 to allow Claimant time to obtain representation. Carrier reaffirmed Claimant's disqualification on February 28, 1963.

Paragraph one of the Organization's statement of claim alleges that the Carrier violated the agreement when it disqualified the Claimant without first conducting a hearing as requested. Paragraph four demands a day's pay for each day from February 11, 1963 until May 1, 1963.

Award 98, Special Board of Adjustment 192, seems to us to be the proper controlling precedent on this question. In that case the Board said:

" . . . Under this rule it seems apparent that when hearing is requested, the holding of the hearing is a prerequisite to removal from the position. When hearing is promptly requested as it was in this instance an employee held off a position is entitled to compensation for time lost pending the hearing, at least from the time when hearing is requested and notice given to the Carrier. The Carrier, as the employees correctly recognize, cannot be held responsible for time lost by reason of a postponement initiated by the employee's representative . . . "

Applying this language to the instant case, we will sustain that part of claim four, which relates to the time between February 11, 1963 and February 21, 1963.

Paragraph two of the employees' statement of claim is moot in that it does not seek a remedy from this Board. It is hereby dismissed.

Paragraph three pleads a conclusion and is not supported by facts of record. It is also dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1966.