

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 19916
Docket Number CL-19929

Burl **E.** Hays, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: {
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-7135**)
that:

1. Carrier violated the Clerks' Rules Agreement when it failed to hold an unjust treatment investigation within seven days of the date written request was made by employee **E. R. Hilden**.

2. Carrier further violated the Clerks' Rules Agreement when the conducting officer would not permit the **employee's** representative to ask him any questions thereby not affording employee Hilden a fair and impartial investigation.

3. Carrier by its actions unjustly treated employee Hilden when it arbitrarily, without conference, negotiation **or** agreement abolished her **position** and transferred the assigned work thereof to positions and **employees** in other seniority **districts, without** affording her any opportunity to follow her work or receive other protective benefits.

4. Carrier shall be required to compensate employee **E. R. Hilden** a day's pay at the rate of Position 88610 for May 10, 1971 and for all subsequent days until she is justly treated.

OPINION OF BOARD: The parties have set forth in this record, which is approximately 90 pages long, argument and counter-argument, **charges** and countercharges pertaining to rules and procedure violations, all of which beg the basic question before the Board: Was Claimant E. R. Hilden unjustly treated following the abolishment of her position effective May 7, **1971?** Notwithstanding what the Parties have set forth in their Submissions, our job is to decide the four points set forth in Petitioner's Statement of Claim to the Board.

The procedural question in Claim **#1**, that Carrier failed to hold timely investigation, should have been raised by Claimant or her representative at the Hearing. Since it was not raised the question of timeliness of the Hearing was waived, and therefore Claim **#1** is denied.

In Claim **#2** Claimant alleges she was not afforded a fair and impartial investigation because "the conducting officer would not permit the employee's representative to ask him any questions". It is our view that had

Claimant desired to call the conducting officer as a witness in her behalf she should have made this desire known prior to the investigation. The conducting officer would then have had an opportunity to detach himself from his role as conducting officer at the investigation and could have been called as a witness for Claimant. **However**, since this was not done and he had assumed the **role** of conducting officer, he was not subject to questioning as a witness. Therefore, Claim #2 is rejected.

In considering Claim #3 we note that this claim was stated as having been the reason that the investigation was requested by Claimant, i.e., that Carrier arbitrarily, without conference, negotiation or agreement, abolished her position and transferred the assigned work thereof to positions and employees in other seniority districts, without affording her any opportunity to follow her work or receive other protective benefits. There is nothing in support of these contentions to be found in the Transcript of the Investigation and, moreover, they were not even discussed. Mere statements without supporting evidence cannot be accepted as proof of probative evidence. Claim #3 is dismissed for lack of proof.

Claim #4 must fail because of what we have set forth regarding Claim #3.

Having made these decisions on the four specific items set forth in the Statement of Claim, we do not feel it **mandatory** to consider further the multitude of arguments raised by the Parties in their respective Submissions and Rebuttals.

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 not violated.

A W A R D

Claims denied and dismissed in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

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THIRD DIVISION

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PARTIES TO DISPUTE: (

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STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood ('X-7135)
that:

1. Carrier violated the Clerks' Rules Agreement when it failed to hold an unjust treatment investigation within seven days of the date written request **was** made by employe E. R. Hilden.

2. Carrier further violated the Clerks' Rules Agreement when the conducting officer would not permit the **employee's** representative to ask him any questions thereby not affording employe Hilden a fair and impartial investigation.

3. Carrier by its actions unjustly treated employe Hilden when it arbitrarily, without conference, negotiation or agreement abolished her position and transferred the assigned work thereof to positions and **employees** in other seniority **districts, without** affording her any opportunity to follow her work or receive other protective benefits.

4. Carrier shall be required to compensate employe **E. R. Hilden** a day's pay at the rate of Position 88610 for May 10, 1971 and for all subsequent days until she is justly treated.

OPINION OF BOARD: The parties have set forth in this record, which is approximately 90 pages long, argument and counter-argument, **charges** and countercharges pertaining to rules and procedure violations, all of which beg the basic question before the Board: Was Claimant E. R. **Hilden** unjustly treated following the abolishment of her position effective May 7, **1971?** Notwithstanding what the Parties have set forth in their Submissions, our job is to decide the four points set forth in Petitioner's Statement of Claim to the Board.

The procedural question in Claim **#1**, that Carrier failed to hold timely investigation, should have been raised by Claimant or her representative at the Hearing. Since **it** was not raised the question of timeliness of the Hearing was waived, and therefore Claim **#1** is denied.

In Claim **#2** Claimant alleges she was not afforded a fair and impartial investigation because "the conducting officer would not permit the employee's representative to ask him any questions". It is **our** view that had

Claimant desired to call the conducting officer as a witness in her behalf she should have made this desire known prior to the investigation. The conducting officer would then have had an opportunity to detach himself from his role as conducting officer at the investigation and could have been called as a witness for Claimant. **However**, since this was not done and he had assumed the **role** of conducting officer, he was not subject to questioning as a witness. Therefore, Claim #2 is rejected.

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Claim #4 must fail because of what we have set forth regarding Claim #3.

Having made these decisions on the four specific items set forth in the Statement of Claim, we do not feel it mandatory to consider further the multitude of arguments raised by the Parties in their respective Submissions and Rebuttals.

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