

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22444
Docket Number CL-22327

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(& press and Station Employees
(
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8515) that:

1. Carrier violated, and continue to violate, the agreement between the parties, when, on January 4, 1977, J. A. Gobbell was arbitrarily released from position of Chief Clerk and her request for a hearing to determine the cause of such action was denied.

2. Carrier shall pay Ms. Gobbell the difference in rate of Chief Clerk and other positions held from January 5, 1977 and until such time as she is returned to the Chief Clerk position or until such time as the agreement is complied with and she is given the hearing requested per Rule 28.

OPINION OF BOARD: This Claimant had been assigned to the Chief Clerk position at Carrier's Toledo Terminal; which position was excepted from certain of the rules of the applicable agreement; including the Promotion, Assignment and Displacement Rule. However, the position was not excepted from the provisions of Rule 28 - Unjust Treatment.

The Claimant was relieved from the Chief Clerk position on January 4, 1977, and thereafter, she requested a hearing under Rule 28. Carrier denied the request on the basis that:

"Rule 28 provides for right of investigation for grievances... otherwise than covered by these rules... Since you were released on January 4, 1977 in accordance with Rule 26, your request is denied."

The applicability of Rule 28 to situations of this type has been considered and decided on this same property between these same parties. Award No. 28 of Public Law Board No. 1790 ruled:

"Rules 10 and 28 are not in conflict." We agree with that conclusion, and in this case, we find no conflict between Rules 26 and 28. Thus, it would seem that on this property, the Agreement relative to the employe's right to a hearing under Rule 28 is- or should be -put to rest.

However, inasmuch as the position here involved was an excepted position as described by Rule 26 and Carrier therefore retained the right of appointment and removal, we will not award the allowance requested in Part 2 of the Statement of Claim.

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.

A W A B D

Claim No. 1 sustained.

Claim No. 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1979.