

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22029
Docket Number CL-22596

William M. Edgett, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8581)
that:

1. Carrier violated, and continues to violate, the agreement between the parties, when, on March 3, 1977, B. Agather was arbitrarily released from position of Assistant Chief Clerk and her request for a hearing to determine the cause of such action was denied.

2. Carrier shall pay Ms. Rather the difference in rate of Assistant Chief Clerk and other positions held from April 28, 1977 and until such time as she is returned to the Assistant 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: Claimant was removed from her Section 6 position by Carrier and received notice of the removal in a letter dated March 2, 1977. On April 28, 1977 she requested a hearing. Carrier did not respond to her request and on May 24, 1977 the Local Chairman filed a claim, requesting the difference in pay between her former position and the position she exercised seniority to after release from her excepted position.

Carrier has argued that the claim is not timely and that, in any event, Claimant is not entitled to a hearing under Rule 28, which reads:

"RULE 28 - UNJUST TREATMENT

An employe who considers himself unjustly treated, otherwise than covered by these rules, shall have the same right of investigation, hearing, appeal and representation as provided in these rules, if written request which sets forth the employe's grievance is made to his immediate superior, within sixty (60) days of cause of complaint."

This Board has decided the latter question in Award 22444 which sustained an **employee's** request for a hearing in similar circumstances. Therefore, the question of **Claimant's** entitlement to a Rule 28 hearing **is** settled. She **is** entitled to a hearing. The remaining question **is** whether a timely request was made for the hearing.

Claims **must** be filed within sixty days of the date of the occurrence. **Claimant** filed her request for a hearing **in a timely manner** on April 28. Carrier made no response. **Her** local chairman filed a further claim on May 24, asking for the difference in pay, **and** citing her request for a hearing. On June 16 Carrier denied the claim, **as** untimely, on the ground that the local chairman's claim was out of time since it had been filed **some** 83 days after the date of the occurrence.

Time limits are set for a purpose and it **is** the **Board's** obligation to carry out the parties' purpose by respecting them. However, they **must** be given a reasonable application. They are not intended to provide a technical defense in those instances when no meritorious defense is available. Here there has been substantial compliance with the letter and spirit of the Rule. Carrier **was** placed on actual notice that Claimant **was** seeking a hearing **under Rule** 28 within the 60 days period provided by the Rule. It **never** answered Claimant's request. The Local **Chairman** made a request **for the difference in pay** between the **position in** question and that part of the claim came after sixty days. However, the Local **Chairman** referenced **Claimant's** request for a hearing and Carrier took the position **that** it came too late. If it had been made for the first time by the local **Chairman**, Carrier would be correct. **However, Claimant's** April 28 request **was** not too late and it could not be **simply** ignored. Carrier had actual notice of a request by **Claimant** for a Rule 28 hearing, **on a timely basis**, and is estopped **from** raising a time limit argument as to that request. In part that finding follows Carrier's failure to make a response to the **request** for a **Rule** 28 hearing.

The claim cannot be sustained, **as** presented. **However**, the Board will **sustain** that part of the claim which requests Carrier **to grant** a Rule 28 hearing.

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

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

That the Agreement **was** violated.

A W A R D

Claim sustained to the extent expressed in **the** Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at **Chicago**, Illinois, this 30th day of April 1980.