NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23076
Docket Number CL-23092

A. Robert Lowry, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8851) that:

1) Carrier violated and continues to violate the Clerks' Rules Agreement, and the July 11, 1977 Agreement when it preferred charges against employe L. A. Wolshlager on September 28, 1977 with unspecified dates which were all beyond the time limits contained in Rule 22(a) and subsequently disqualified him effective November 3, 1977.

2) Carrier shall be required to reinstate L. A. Wolshlager to a position in Seniority District No. 1 and permit him to exercise his seniority in accordance with the Clerks' Rules Agreement.

3) Carrier shall be required to comply with the April 5, 1974 Memorandum of Agreement and compensate L. A. Wolshlager his displacement allowance at the rate of Fate Analysis Clerk Position No. 15870 for each day that he remains a disqualified furloughed employe.

OPINION OF BOARD: On November 3, 1977 Mr. L. A. Wolshlager, the Claimant, was disqualified from Rate Analysis Clerk Position No. 15870. Charges were filed on September 28, 1977 against Claimant under Rule 22 of the Agreement. An investigation was held on October 10, 12, 25 and 31, 1977; copy of the transcript was made a part of the record. Claimant was charged with being "manifestly incompetent" in the performance of his regularly assigned duties; several specific incidents of failure to perform were cited.

The record shows the Claimant has seniority dating from March 26, 1963, with over ten (10) years experience as a Rate Analysis Clerk. As a result of a preceding dispute over Claimant's qualifications for Rate Analysis Position No. 15870, on July 11, 1977 an agreement was reached between the General Chairman and the Assistant Vice President Labor Relations permitting Claimant to exercise his seniority rights to this position. He commenced working the position July 13, 1977.

The Organization argues:

1) The September 28, 1977 charges are in default of the time limits prescribed in Rule 22(a);

2) Carrier failed to fully cooperate with Claimant during the thirty (30) day period in which he had to qualify under Rule 8; and

3) That the duties assigned Claimant were those normally under the jurisdiction of Rate Analysis Position No. 15640, a higher rated position requiring more complicated technics, which were unfamiliar to Claimant, and specifically were not the regularly assigned duties of Position No. 15870.

A careful reading of the record shows some of the documents relied upon in the charges predate the fifteen (15) day period prior to the date of the charges, however, the work on the projects, on which the Carrier based its incompetency charges, extend into the fifteen (15) day period, bringing the charges within the time limits.

Rule 8 of the Agreement allows an employe thirty (30) working days in which to qualify on a new position "*** and will be given full cooperation of department heads and others in his effort to do so." The Claimant testified that he received no direct help from his supervisors or others when requested and his questions about his work went unanswered. The Carrier disagrees and points to several lengthy letters written Claimant outlining errors and delays attributed to him in his handling of several rate analysis projects. While the letters were constructive, they were written after the fact and not evidence that cooperation was given when requested. If it had, perhaps the work might have been performed correctly and timely in the first place. We cannot lose sight of the fact this employe had over ten (10) years experience as a Rate Analysis Clerk.

Countering Item 3 of Organization's argument, Carrier's witnesses testified and submitted voluminous exhibits of work projects which showed Claimant's failure to perform the duties assigned within the time restraints. The Organization did not attempt to refute Carrier's testimony but instead contended throughout the investigation and in the handling on the property that Claimant was assigned work which belonged under the jurisdiction of Rate Analysis Clerk Position No. 15640, which position carried a higher rate of $1.6851 per day more than 15870. The Organization contends the I.5870 position should have been assigned duties involving the rating of iron and steel commodities rather than the duties that were assigned, the rating of sand, gravel and cement commodities requiring more technical rate application, and which it contends cams under the jurisdiction of Position No. 15640. Claimant testified he was familiar with the iron and steel commodity rating work but was not acquainted with the work related to the other commodities. The Organization argues with considerable merit that Claimant was charged with being incompetent to perform

work not part of his regularly assigned duties. The Board gives considerable weight to the fact that Claimant was permitted by the Agreement of July 11, 1977 to exercise his seniority rights to Position No. 15870 rather than tbe higher rated Position No. 15640, which the Organization argues he could have done. It is the normal application of seniority rights in this industry for an employe to take the highest rated position to which his seniority and qualifications will entitle him.

The Carrier disagrees with this argument and contends there has never been any commodity jurisdiction connected with any rate analysis position and points to the two bulletins advertising Positions No. 15870 and No. 15640, both listing identical principal duties. This Board feels the difference in the sate of pay of the two positions contradicts this argument.

Part 3 of Organization's claim demanding payment under the Apri15, 1974 Memorandum of Agreement is dismissed. No mention of this claim or the Agreement was made in the briefs of either party.

The Board finds after careful examination of this voluminous record, including the transcript, that Carrier did not give full cooperation required under the rule to assist Claimant in qualifying for Position No. 15870. While the record is cloudy with respect to the question of jurisdiction of work regularly assigned to rate analysis positions, the Board feels the Organization's argument outweighs the Carrier's. The fact Claimant obtained the position through application of the mandatory Agreement of July 11, 1977 indicates to this Board reluctance on Carrier's part to accept and cooperate with this employe. The Board finds a violation of Rule 8. However, since the record shows Claimant declined offers of positions and has not exercised his seniority rights to other positions advertised within his seniority district after being disqualified, we limit compensation to the rate of pay of Position No. I.5870 from the date disqualified, November 3, 1977, to the date the record shows the position was abolished, November 18, 1977, inclusive. The Carrier has no further liability.

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

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

That the Agreement was violated.

A W A R D

Claim sustained to the extent set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1980.