

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23550**
Docket Number **CL-23701**

Rodney E. Dennis, 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-9262**)
that:

1) Carrier violated and continues to violate the Clerks' Rules Agreement at Chicago, **Illinois commencing** September 25, **1978** when it failed to **assign** Position No. 26310 or Position No. 26320 both titled Time Revisor to **Employee Nancy L. Hollis**.

2) Carrier further violated the Agreement when it refused to grant **Employee Hollis** an investigation as per her request in line with the provisions of Rule 22(f).

3) Carrier shall now be required **to** recognize **Employee Hollis'** seniority rights, assign her to Position No. 26310 or 26320, and **compensate** her for **an** additional day's pay at the appropriate rate for each workday she is denied her contractual rights to that position.

4) Carrier shall be required to pay interest in the **amount** of seven and one-half (7%) percent per annum on all wage loss sustained as set forth under Item 3 of the claim **until** the violation has been corrected.

OPINION OF BOARD: **Claimant N. L. Hollis** was not assigned to **Position** NO. 26310 or 26320, the Time Revisor positions she sought. **Two employees** less senior than claimant were awarded these positions. Claimant inquired as **to** why she was not assigned one of the two jobs. She **was** told that she did **not** possess the **necessary** skill and ability to perform the required work.

She thereupon requested **an** unjust treatment hearing, as outlined in Rule 22(f). Claimant was informed that she was not authorized such a hearing, because her claim was covered by a specific rule of the agreement.

On November 10, 1978, the Local **Chairman** filed the above-cited claims on behalf of the **Grievant**. The **claims** were addressed to T. M. Hansen. On **January 29, 1979**, the Local Chairman **again** wrote T. M. Hansen, pointing out that he had not responded to the **November 10, 1978**, claim and that the 60 days allowed by **Rule 36(a)** to deny **a** claim had expired. Therefore, the claim must be allowed as presented.

No answer was **received** by the Local Chairman to either of these letters. Failing to receive a response, the Local Chairman forwarded the claim to the General Chairman.

On March 26, 1979, the General Chairman wrote V. W. Merritt, the Assistant V. P. for Labor Relations, outlining what had taken place on the property. Merritt replied to the General Chairman on May 23, 1979, indicating that a valid claim did not exist and declining it if it did exist. On April 2, 1979, G. A. Jonasson, Division Manager, wrote Joseph Cipollo (the Local Chairman who had replaced the Local Chairman who had initiated the claim) and denied the claim.

A review of the record by this Board reveals that Petitioner has abandoned its claim on points 1 and 2 and that this claim is before this Board on the time limit issue alone.

The Organization argues that Carrier failed to disallow the instant claim within the 60 days required by Rule 36(a) and therefore the claim must be allowed as presented. This Board is in agreement with Petitioner that Carrier failed to comply with the time-limit requirement of Rule 36(a) and therefore will sustain the claim as presented on items 3 and 4. It only remains to decide when Carrier officially denied the claim and when the liability of Carrier ceases.

It is this Board's opinion that Carrier's letter dated April 2, 1979, was a proper rejection of the claim and that Carrier's liability ceases on that day. General Chairman McPherson was put on notice on February 13, 1979, by V. W. Merritt, Carrier's Assistant V. P. for Labor Relations, that G. A. Jonasson was the official authorized by Carrier to receive claims in the first instance in Seniority District No. 3 and he would also reply over his signature to any and all claims presented but not replied to by Mr. T. M. Hansen. Given that correspondence, the Petitioner cannot be heard to argue that the instant claim was not denied by Carrier on April 2, 1979.

The claim shall be allowed as presented on items 3 and 4.

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 R D

Claim sustained in accordance with the Opinion.

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By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.