

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24049
Docket Number CL-23865

Martin F. Scheinman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9329) that:

1) Carrier violated and continues to violate the Clerks' Rules Agreement at Milwaukee, Wisconsin when it arbitrarily disqualified Employee Virginia Christian on Assistant Cashier Position No. 87050.

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

3) Carrier shall now be required to recognize employee Christian's seniority and promotional rights by assigning her to Position No. 87050 and compensating her for an additional day's pay at the appropriate rate for each workday she is denied her contractual rights to that position commencing June 20, 1979.

4) Carrier shall further be required to pay interest in the amount of seven and one-half (7½) percent per annum on all wage loss sustained as set forth under Item (3) above until the violation is corrected.

OPINION OF BOARD: Claimant, V. Christian, is the regularly assigned occupant of Caller Street Muskego Yard in Seniority District No. 4. Claimant has a seniority date of October 28, 1952.

On June 11, 1979, Carrier issued Bulletin No. 257 to employee in District No. 4 advertising vacancy on Assistant Cashier Position 87050 in the Caller's office at Milwaukee, Wisconsin.

On June 20, 1979 Bulletin No. 270 was issued to employees in Seniority District No. 4. The Bulletin awarded Position 87050 to W. J. Bostrom, who has a seniority date of December 5, 1953.

On June 26, 1979, Claimant requested, by letter, an unjust treatment investigation under the provisions of Rule 22(f) account of not being awarded Position 87050.

Carrier denied Claimant's request for an unjust treatment investigation. It asserted that "Rule 22f was intended to **cover** situations which may arise **from** time to **time** which are not covered by the rules or **agreements**". According to Carrier, since **Claimant's** application for Position 87050 was denied pursuant to rule 7 of the Agreement, Rule 22(f) was not applicable in this case.

The Organization argues that Carrier's denial of an unjust **treatment** investigation violates Rule **3** - Seniority; Rule **7** - Promotional and Rule 22(f) - Discipline and Grievances. In its view, the entire controversy would have **been** eliminated if Carrier would **have held the requested investigation. There, Claimant** would have had a full opportunity to establish whether she did or did not possess sufficient fitness and ability to perform the job.

The central issue here is whether Carrier was obligated to provide Claimant with an unjust treatment hearing. It is undisputed that Claimant's request for one was instituted in a timely **manner**.

This issue has been presented to this Board on numerous prior occasions. Awards of this Division, involving these same parties, have been issued which resolve many of the questions raised **in** this case. Clearly, it is **now** established that an unjust treatment hearing is required provided the allegation is that the **employee** lacked fitness and ability to do the job and provided further that the employee timely requests such a hearing. See Awards 8233, **9415, 9854, 18922, 23283 and 23923**. Nothing presented here convinces us that the reasoning contained **in** those awards is palpably erroneous.

Stated simply, we are persuaded that this issue has been resolved **once** and for all.

Given these prior awards involving the same parties, we **will sustain** parts (1) and (2) of the **claim**. Carrier shall also compensate **Claimant** the difference, if any, between what she earned and what she would have **earned** when it fell to **award** her Position No. 87050. The Organization's request for **additional** remedies **in paragraphs (3) and (4)** of the statement of **claim** are not **available** under the facts of this **case**.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By  _____
Rosemarie Brasch - Administrative Assistant

Dated **at** Chicago, Illinois, this 29th day of **November** 1982.