

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert Silagi, Referee

Award Number **24380**  
Docket Number MS-24501

PARTIES TO DISPUTE: { **Marvin J. Sinwald**  
                                  { **Norfolk and Western Railway Company**

STATEMENT OF CLAIM: **"This** is to serve notice, as required by the rules of the National Railroad Adjustment Board, of **Marvin J. Sinwald's** intention to file **an ex parte** submission on Dec. 24, **1981** covering an unadjusted dispute between **Marvin J. Sinwald** and the Norfolk & Western Railway Company **involving** the question:

**Unjust** Treatment under Rules 28 and 10 of the Clerks **Master** Working Agreement."

OPINION OF BOARD: Claimant entered the service of the former Pennsylvania Railroad in **1953**. In **1964** the **Sandusky** Line of the Pennsylvania Railroad became part of the Norfolk and Western Railway Company and **Claimant** became an **employee** of that Carrier. In **1980**, as a result of the abolishment of his position, **Claimant** exercised his seniority displacement rights under Rule 20 of the Master Agreement of Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station **Employees**, and displaced to the T.O.F.C. (Piggyback) Clerk position effective July **28, 1980**. On August **8, 1980** pursuant to Rule 10, Claimant was notified that he was disqualified from the position at the T.O.F.C. ramp offices.

Rule **10-Qualifying**, states that:

"(a) **An** employee awarded a bulletin position or who exercises displacement rights thereon shall be allowed forty (**40**) working days with pay in which to qualify except **when** it is **evident** he will not qualify for the position he **may** be **removed** from the **position** at any time before the **expiration** of the qualifying period of forty working days."

The Carrier notes that **Claimant** was **removed** from the position of clerk at the T.O.F.C. ramp after ten days because of lack of aggression in making decisions on correct procedures, failure to take a yard **count** and other reasons which in effect was costing the **Carrier** "**untold** dollars".

Rule **28-Unjust** Treatment states:

"An employee **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..."

The key to the problem herein is whether Claimant has a right to a hearing under Rule 28 to review his disqualification **in** accordance with Rule 10. We need not linger **long** on this dispute inasmuch as the **same arguments** have been made by the **same** Carrier and Organization involving the **same Rules Agreement** in at least five prior Awards of Public Law Board No. 1790. In each case the Board held in the negative, that is, Rule 28 applies only when the **unjust** treatment is **not covered** by a rule. Given that situation these five **prior** awards are **res judicata** to this case. (See **Third Division Award 19007 - Ritter**). Accordingly this **claim** must be denied.

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 not violated.

A W A R D

Claim denied.

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 13th day of May 1983.

