

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24469**
Docket Number **CI-24269**

George S. Roukis, 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-9492**)
that:

1. Carrier violated the Clerks' Rules Agreement at Nahant, Iowa when it failed and/or refused to award Clerk Position R-12 to **Employee F. A. Maas.**

2. Carrier further violated the Clerks' Rules Agreement when it denied him the **right** of investigation in line with the provisions of Rule 22(f).

3. Carrier shall **now be** required to compensate employe F. A. **Maas** an additional eight (8) hours at the pro rata rate of Clerk Position R-1.2 for April **16, 1980** and continuing for each workday of that position until the violation is corrected.

4. **Carrier** shall further be required to pay interest in the amount of fifteen (15) percent on all monies due as **stated** in Item (3) above, payable on each anniversary date of this claim.

OPINION OF BOARD: **The** pivotal issue **herein** has been frequently decided by this Board. In the predecessor cases involving the same Organization and the same Carrier, we had consistently ruled that an employe is entitled to an unjust treatment investigation, pursuant to Rule 22(f), when said **employe** has been denied a position because of alleged lack of fitness and ability. There is nothing in the instant dispute which would warrant a variant interpretation. Claimant filed a grievance when Carrier refused **to accord** him an unjust treatment hearing. He argues that he was the most senior employe and should have been awarded the Relief Clerk **position** R-1.2 at Nahant, Iowa. The position **was awarded** to a junior employe.

Carrier contends that Rule 22(f) is inapplicable since it may only be invoked when the asserted unjust treatment is for an offense, occurrence or circumstance not covered by a rule in the Clerk's Agreement. It avers that Rule 7 covers Claimant's situation and thus his request for an unjust treatment investigation is without Agreement support.

In our review of these **arguments**, we do not agree with Carrier's position. As we pointedly stated in prior precedent awards, such a hearing is required when an employe timely requests it. In Third Division Award No. 23253, involving the same parties, we held in part that:

"Numerous awards of this Division, involving the same parties, have been issued, holding that employees were entitled to

unjust treatment-hearings under **Rule** 22(f), or prior similar rules when denied positions because of alleged lack of fitness and ability. See Awards **8233, 9415, 9854** and **18922**. Also, a number of awards involving the same parties, have been issued indicating that unjust treatment hearings were granted in similar cases before the disputes were appealed to this Division. **See Awards 21615, 22442, 22443, 23050 and 23064.**"

We reiterate< this unambiguous interpretation in subsequent awards involving the same parties. See Third Division Awards Nos. 23023 and **24049**. Surely, at this juncture, we would **expect** that this adjudicative issue has been permanently resolved. It ill serves the **arbitral** process when one of the' parties continually seeks to reverse consistently held judicial determinations. The Principle of Res Judicata must apply. We will sustain parts 1, 2 and **3** of the claim, except that with respect to part **3**, Carrier is directed to compensate Claimant the difference between what he earned and what he would have earned, if any, when it failed to award him the contested position. Part **4** of the claim is 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 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*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **14th day** of July **1983**.