

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24610
Docket Number CL-23448

Herbert Fishgold, 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-9020**) that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when on February 21, 1979 it failed and/or refused to permit Employee P. Wolfe to exercise her seniority to displace a junior employee in Seniority District No. 1.

2) Carrier further violated the Agreement when on March 8, 1979 the Carrier failed to afford Employee P. Wolfe the right of investigation after being unjustly treated.

3) Carrier shall now be required to **compensate** employee P. Wolfe an additional eight (8) hours pay at the pro rata rate of Relief Tracing & Reconsigning Clerk Position No. 56 for February 21, 1979 and for each subsequent workday until the violations are corrected.

OPINION OF BOARD: Claimant, P. Wolfe, is the regularly assigned occupant of Percent Clerk - Grade A Position No. 44960 in Seniority District No. 1 at Chicago, Illinois. She has seniority date in District No. 1 of April 23, 1973.

On February 9, 1979, employee Wolfe was displaced from Position 44960 by a senior employee effective February 15, 1979. She remained on the position from February 9 through February 20, 1979 breaking in the senior employee who displaced her.

On February 21, 1979, Claimant attempted to exercise her seniority to a Tracing and Reconsigning Clerk Position, for which **she** was found to lack sufficient fitness and ability to displace on said position.

On February 28, 1979, an employee with less seniority than Claimant was allowed to displace another junior employee occupying Relief T-racing and Reconsigning Clerk Position No. 56.

On March 1, 1979, Claimant, by letter, requested an unjust treatment investigation under the provisions of Rule 22(f) on account of not being awarded Position 56. Her request was denied on the basis that Rule 22(f) may be invoked only when the alleged unjust treatment is for an offense, occurrence or circumstance not covered by a rule in the Clerks' Rules Agreement. The **Carrier** took the position that Rules 7 and 12 of the Agreement **cover Claimant**, and that, therefore, Rule **22(f)** was not applicable in Claimant's case.

The Organization argues that Carrier's action violated Rule 3, Seniority; Rule 7, Promotion; and Rule 22(f), Discipline and **Grievances**. The Organization maintains that the whole controversy could have been eliminated if Carrier would have provided the requested **investigation**. Then, according to **the Organization**, Claimant would have had the opportunity to establish whether she did or did not possess sufficient fitness and ability to warrant displacing to Position 56.

The **gravaman** of this matter is whether Carrier was obligated to provide Claimant with an unjust treatment hearing. It is undisputed that Claimant's request was instituted in a timely manner.

This issue has been before 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 has been established that such a hearing is required provided the employee requests it in a timely fashion, and when the allegation is that the employee lacked fitness and ability to perform the job. See, e.g., Awards 8233, 9415, 9854, 18922, 23283, 23923, and 24049. Nothing presented here convinces us that the reasoning contained in those awards is incorrect.

To echo the most **recent** awards so holding, **"we are persuaded that this issue had been resolved once and for all."**

Given these prior awards involving the same parties, we will sustain parts (1) and (2) of the claim. With regard to part (3) of the claim, we shall require the Carrier to compensate Claimant the difference between what she earned and what she would have earned, if any, when it failed to let her displace the junior employee of Position No. 56.

The Carrier did raise one procedural objection, alleging that the claim was not properly handled by the Organization under the provision of Rule 36, Claims and Grievances, in that the claim that was **"appealed"** to Mr. Merritt is not the same claim that was presented to the Carrier official authorized to receive claims in the first instance in Seniority District No. 1. Suffice it to say that we cannot find any substantive discrepancy in either instance which would have misled the Carrier as to the nature of the claim.

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 **Employee** 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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.