

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24827  
Docket Number CL-24549

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9571)  
that:

(1) Carrier violated the Agreement in effect between the Parties when, on July 28, 1980, Mr. T. V. Blayney, incumbent Agent-Operator position at Troy, Ohio, was arbitrarily and capriciously declared disqualified from said position, and

(2) Because of such impropriety, Carrier shall be required to compensate Mr. T. V. Blayney the difference in compensation allowed and the compensation denied, effective July 31, 1980, and continuing, until he is restored to Agent-Operator position at Troy, Ohio.

OPINION OF BOARD: The basic question before this Board is whether or not Carrier arbitrarily disqualified Claimant from the Agent-Operator position at Troy, Ohio on July 28, 1980.

As of January 1, 1979 the force structure at the Troy situs consisted of one Agent-Operator position C-296 and one Chief-Cashier's position C-297. Claimant occupied the latter position. The incumbent of the Agent-Operator's position retired on May 31, 1979 and Claimant was awarded this position on June 1, 1979. The Agent-Operator's position additionally absorbed some of the duties of the Chief-Cashier's position, which was abolished on June 22, 1979. The duties of the Agent-Operator's position required the incumbent to be qualified to handle all agency functions as well as qualified on the book of rules for the purpose of performing the Operator's duties.

In defense of his petition, Claimant argues that he was required to perform both the work of the Agent-Operator's position and the Chief-Cashier's position at Troy, Ohio. He asserts that the resulting work load was unduly excessive since he was required to perform two jobs. He contends that he performed past service on such positions as Freight Agent, Chief Clerk, Yard Clerk, Demurrage Clerk and Operator without any complaint from Carrier and without any disciplinary action taken against him, and avers that Carrier capriciously disqualified him on July 28, 1980. In addition, he maintains that Carrier failed to comply with Article III, Section 3(a) of the National Mediation Agreement when it did not provide the thirty (30) days written notice to the involved General Chairman that the Chief-Cashier's position was being abolished and the duties absorbed in the Agent-Operator's position. He also asserts Carrier violated Rule 32(c) of the Collective Agreement when it did not provide him with a written decision of its determination within ten (10) days of the date of investigation.

Carrier contends that he was disqualified for cause and in accordance with the pertinent procedural rules of the Collective Agreement, since a detailed independent audit of the B&O Agency at Troy, Ohio, revealed that he failed to meet the minimum expected performance standards of the Agent-Operator's position. In particular, it asserts that various correspondence, tracers and reports were found to be considerably in arrears, approximately 165 outbound waybills had not been issued, demurrage accounts showed numerous discrepancies, correspondence went unanswered back to August, 1979, and \$335,738.87 in revenue was untimely collected which denied Carrier the loss of interest income. It avers that it was compelled by the audit results to disqualify him from the position, but asserts that it removed him pursuant to the procedures of Agreement Rule 32(c) when it provided him an investigation on August 11, 1980. It recognizes that it did not furnish him a written letter within the ten (10) days period prescribed by Rule 32(c), but contends that it was due to an inadvertent oversight which did not impede or affect Claimant's due process rights.

In our review of this case, we agree with Carrier's position. Close reading of the investigative transcript does not indicate that Carrier based its determination upon inconsequential considerations or superficial grounds. The information developed at the hearing pointedly demonstrates that Claimant did not perform adequately the duties of the Agent-Operator's position as evidenced by the specific performance shortfalls identified. To be sure, Carrier may have been remiss by not monitoring his work on a more regularized basis, but the audit findings and the significance of his underperformance outweighs Carrier's presumptive lack of managerial diligence. Moreover, we have no evidence that Claimant notified Carrier that he was having difficulty performing his duties or that he was unable to obtain better performance from the clerk under his direct supervision. We are mindful that Carrier did not comply with the time requirements of Rule 32(c) when it did not render its written decision within ten (10) days from the date of the hearing, but we believe, under the circumstances of this omission, that it did not negatively affect or constrain Claimant's due process rights. In Third Division Award No. 14348, which conceptually parallels this case, we held in part that:

"The second procedural matter concerns the promptness of notifying the Claimant of her dismissal following the investigation. The time lapse in the instant case was not so great as to be unreasonable." (See also Third Division Awards Nos. 21415, 13319, 20423 et. al.)

We find this decision rationale relevant to our finding on the procedural question posed and thus, based upon the entire record, we will deny 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 Employee 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 not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
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Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984