

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26302
Docket Number CL-26078

Gil Vernon. Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(
(The Denver and Rio **Grande** Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(CL-9959) that:

1. Carrier violated and **continues** to violate the terms and provisions of Rule 9(c), Rule 23, Rule 25, and Rule 26 of the Clerical Agreement and other related rules **when** on July 11, 1983, it refused to grant the timely request for an unjust treatment hearing of Mr. Morris Pulley.

2. Carrier shall now be required to compensate Mr. Morris Pulley the difference between the rate of pay of the Chief Clerk in the Salt Lake Traffic Department and his earnings beginning sixty (60) days prior to the date of this claim and continuing until corrected, and;

3. Carrier shall be required to compensate the claimant at the punitive rate of pay for any work he performs on Saturday and Sunday beginning sixty (60) days prior to the date of this claim and continuing until corrected, and;

4. Carrier shall be required to compensate the claimant at the punitive rate of pay for any and all hours worked outside of 8:00 a.m. and 4:45 p.m. beginning sixty (60) days prior to the date of this claim and continuing until corrected ."

OPINION OF BOARD: On June 16, 1983, the Carrier advertised for bids on a Chief Clerk position located at the Salt Lake City Traffic **Department Office.** Bids were received until June 20, 1983. The Claimant was one of several individuals who bid on the job. On June 22, 1983, the Carrier issued Bulletin No. 112 awarding the position to Mr. **W.** A. Cooley, a Telegrapher, effective July 1, 1983.

On July 7. 1983, the Carrier received a letter from the Claimant requesting an unjust treatment hearing as a result of the position being awarded to Mr. Cooley. The request **was** denied **as** untimely.

It is the opinion of the Board that the merits of this dispute cannot be addressed since the request for the unjust treatment hearing was procedurally defective. Rule 23 quoted as follows. indicates the request for a Hearing must be received within ten days of the cause of the complaint:

"Rule 23. For grievances other than discipline an **employee** who considers himself unjustly treated shall have the same right of hearing and appeal as provided above in Rule 21, if written request is made to his immediate supervisor within ten calendar days of cause of complaint. (Emphasis Added)

It has been held before by this Board in similar cases that the cause of the complaint **is** the date the position is awarded. See for instance Third **Division** Awards 21773 and 22669. The date that the other employee physically assumed the position is essentially irrelevant. The Carrier had clearly exercised and communicated its choice for the position on June 22. This is undeniably the cause for the complaint.

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

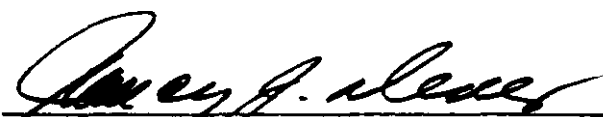
That the Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of April 1987.