

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(R. E. Elliott II  
PARTIES TO DISPUTE: (  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

"1. Carrier violated the provisions of the Agreement between the parties, particularly but not limited to Rule 28, when it failed to grant Clerk R. E. Elliott II, a formal investigation for a an (sic) unjust treatment hearing dated February 25, and March 22, 1988.

2. As a result of said violation, Carrier shall be required to grant Clerk R. E. Elliott II, a formal investigation in accordance with Rule 28 - Unjust Treatment."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Despite the fact that the Claimant had submitted a number of penalty claims on behalf of himself and others, at or about the same time he requested a Rule 28 - Unjust Treatment Hearing concerning the same basic issues addressed in his grievances.

Carrier advised the Claimant that his request was not valid although it did offer to conduct such a Hearing, without precedent, if the Claimant agreed to withdraw all claims and grievances. The Claimant declined to do so.

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Award No. 28534  
Docket No. MS-28945  
90-3-89-3-367

Rule 28 grants a right to a Hearing to an employee who considers himself unjustly treated, "... otherwise than covered by these rules, ...."

The record clearly shows that the Claimant seeks to have it both ways and there is no Agreement support for that desire. See Third Division Awards 21271 and Award 35, PLB 3849, among others.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1990.