

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29698
Docket No. CL-29734
93-3-91-3-206

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(
(Providence and Worcester Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10563) that:

- a. Carrier violated the Clerks' Rules Agreement effective December 22, 1987, particularly, but not limited to Rule 7, paragraph (f) when it acted in an arbitrary and capricious manner in disqualifying Claimant Gregory Naughton, effective June 30, 1989, from position "General Clerk-Enginehouse Facility."
- b. That Claimant Gregory Naughton now be allowed eight (8) hours pay at the pro-rata rate of \$640.72 weekly commencing July 1, 1989, and continuing for each and everyday thereafter on account of this violation.
- c. This claim is presented to the Carrier in accordance with the most recent provisions of our Agreement, particularly Rule 12 and your letter of August 8, 1984, to Mr. Oscar Derderian Sr., whereas the Carrier has elected to come under the provisions of the Adjustment Board."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

Claimant's Yard Office assignment was abolished in March of 1989. He attempted to qualify on a General Clerk's assignment in Carrier's Engine House Facility. This assignment required typing. He was disqualified from that assignment and the ensuing claim was denied by Carrier's highest appeal officer on August 15, 1989. On April 1, 1991, Notice of Intent to docket the dispute with this Board was filed.

The Organization maintains that Claimant's disqualification was flawed because the typing requirements were altered from 60 words per minute to 50 words per minute shortly after Claimant was disqualified. Claimant was enrolled in a State sponsored typing course which improved his typing ability during the qualification period, there was not an actual need for typing on the job (Claimant having only been required to type two letters in the time-span he worked the assignment) and other factors (not previously mentioned) were improperly interjected into the disqualification letter.

Carrier first insists that the Claim be dismissed under the Doctrine of Laches. It notes that a twenty month delay occurred from the date of final denial and the date the matter was docketed with the Board. On the merits of the matter it points out that it is manifest that Claimant could not satisfy the typing requirements of the assignment, even after he was afforded an opportunity to improve his typing skills and demonstrate his ability.

In this case Carrier's reliance on the Doctrine of Laches is misplaced. The Parties do not have a time limit provision within their Agreement for appeals to this Board. It is acknowledged that many Agreements have such provisions, some providing for appeals within 9 months and others providing for appeals within 12 months. For whatever their reason, though, the parties here have not adopted a comparable requirement for their appeals. This failure to do so, must be viewed as an expression of their intent that considerably more time than the usual 9 to 12 months would be appropriate for appeal off the property. They clearly cannot be held to the same requirements as if they had time limits spelled out in their Agreement. Applying the Doctrine of Laches would do just that.

With regard to the merits of the matter, the evidence is adequate and certain. Claimant did not satisfy the requirements of the General Clerk position in Carrier's Engine House. There is no showing that his disqualification was arbitrary, capricious or an abuse of Carrier discretion. It will not be disturbed.

Form 1
Page 3

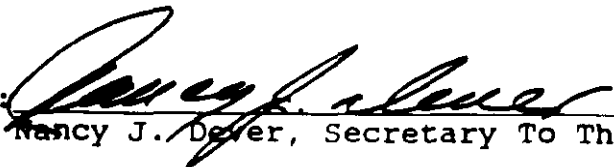
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.