

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31469
Docket No. CL-32109
96-3-94-3-510

The Third Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Union (GL-11093) that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, violating Rule 40 of the Agreement, when it disqualified Clerk James W. Tarber from all positions at the Waycross Materials Department.

2. As a result of the above-stated violation, the Carrier shall:

(a) Compensate Clerk J.W. Tarber, ID 136609, for all time lost, commencing January 29, 1993, and continuing until the violation is corrected.

(b) Compensate Clerk Tarber interest at the rate of 10 percent, compounded annually on the anniversary of this claim, for amount due under Item No. 2(a) above.

(c) Clear Claimant's personal record of any reference of the hearing of March 18, 1993, and the discipline assessed."

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 was working Position No. 263 at the Carrier's Storehouse at Waycross, Georgia. It is undisputed that due to technological advances, Position No. 263 requires a considerable amount of CRT input which Claimant was unable to perform. After a three-way telephone conversation between the Manager Inventory Control, the District Chairman and the Vice General Chairman, the Manager Inventory Control disqualified the Claimant from all clerical positions within the Purchases and Materials Department effective January 29, 1993. The Organization avers that the telephone conference call only concerned Position No. 263, not all positions in the Department. It concedes it agreed to Claimant's disqualification on Position No. 263, but never agreed that Claimant should be disqualified from all positions in the Department.

On February 24, 1993 Claimant requested an Unjust Treatment Hearing under the provisions of Rule 40. On March 19, 1993 the Hearing was conducted by a Purchasing Agent.

On March 22, 1993 the Organization and the Carrier entered into a Letter of Understanding regarding qualifying for a position. The Letter of Understanding was effective April 1, 1993.

On April 6, 1993 the Purchasing Agent wrote the Claimant advising him that there was no merit to the claim of unjust treatment. In the last paragraph of the letter, the Purchasing Agent wrote:

"In the event you wish to qualify for any or all positions in the Purchases and Materials Department at Waycross, you may do so under SCL Revised Rule 12, effective 4/1/93, copy attached."

On May 24, 1993 the Organization appealed the Purchasing Agent's decision to the Assistant Vice President Materials. The appeal was declined by letter dated June 10, 1993, but the Assistant Vice President reiterated the last paragraph of the April 6, 1993 letter.

It is apparent from the record that the Claimant has not been disqualified from all positions in the Department at Waycross as originally stated by the Carrier in its letter of January 29, 1993.

The record reveals that Claimant is free to attempt to qualify on any position in the Department, including Position No. 263.

The Organization sought a remedy seeking pay for all time lost. The record is void of any evidence that the Claimant lost time as a result of the Carrier's action. It is also void of any evidenced that the Claimant made any effort to accept the Carrier Officer's invitation to attempt to qualify on any position in the Department.

Notwithstanding the foregoing, the record clearly reveals that the Organization agreed with the Carrier in January 1993 that the Claimant should, at that time, be disqualified from Position No. 263. This Board finds that the Carrier did not violate the Agreement under these particular facts and circumstances, as the Claimant was not disqualified from all positions in the Purchases and Materials Department.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 1996.