

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33614
Docket No. CL-33644
99-3-97-3-12

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

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11671) that:

1. The Carrier violated the Rules of the Agreement of November 15, 1971, when it failed to grant Clerk Luz E. Garcia an unjust treatment hearing as provided for in Rule 50.
2. Claimant Garcia made a proper request for such a hearing on August 26, 1995, after having been unjustly removed from her PAD Position 005 in Personnel Services on August 25, 1995 and this hearing should now be granted.”

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 were given due notice of hearing thereon.

By correspondence dated August 22, 1995, the Carrier notified Claimant that the Carrier was removing her from the position of Personnel Information Specialist. In its letter, the Carrier informed Claimant that it was removing Claimant because of ongoing interpersonal conflicts involving Claimant and another employee which undermined a productive work environment.

Pursuant to a letter agreement dated April 23, 1992, this position, among others, was designated as a PAD position, that is, a position exempt from the promotion, assignment and displacement Rules of the applicable Agreement. Therefore, the Carrier retained the prerogative to appoint an employee to fill a PAD position and conversely, it may remove an incumbent of the PAD position (and appoint a replacement). Rule 50 permits an employee who believes they have been unjustly treated to request an Unjust Treatment Hearing in writing within 15 days of the cause of the employee's complaint. Within two days, Claimant properly requested a Rule 50 Unjust Treatment Hearing.

The Carrier denied Claimant's request to convene a Rule 50 Unjust Treatment Hearing on the grounds that it had the unilateral right to remove her from the PAD position.

A prior decision of this Board held that an employee removed from excepted positions are entitled to a Hearing to contest the removal if the employee properly tenders the request in conformity with Rule 50. In Third Division Award 22477, the Board observed that the right to an Unjust Treatment Hearing cannot be abridged simply because the outcome of the Hearing may be a foregone conclusion or because the Carrier's decision is not subject to reversal.

We agree with the holding in Award 22477. The Rules covering PAD positions and an Unjust Treatment Hearing are separate provisions of the Agreement. Therefore, the right of an employee to be afforded a Rule 50 Unjust Treatment Hearing is distinct from the Carrier's right to remove the incumbent of a PAD position. Moreover, the provisions are compatible and thus, can be enforced without one nullifying the other.

While Claimant cannot contest the Carrier's decision to remove her, convening a Rule 50 Unjust Treatment Hearing may serve other, laudatory purposes. First, even though the possibility is remote, Claimant may come forward with evidence and arguments which convinces her superiors that she should maintain her PAD position albeit, this Board stresses that the final decision rests with the Carrier. Second, the

Unjust Treatment Hearing will permit Claimant to tell her side of the story which will have some therapeutic value. At least, Claimant will know that she was given a chance to articulate her view. Third, compelling the Carrier to conduct an Unjust Treatment Hearing enforces Rule 50. The parties do not write rules in the Agreement with the expectation that this Board will declare them perfunctory or meaningless.

Therefore, the Carrier shall grant Claimant's request for a Rule 50 Unjust Treatment Hearing and it shall convene the Hearing at the earliest convenience of Claimant and the Carrier.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 16th day of November 1999.