

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34175
Docket No. SG-34710
00-3-98-3-375**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of J. Koran Jr. for payment of the difference between the Foreman rate and the Carrier Maintainer rate for all straight time hours from November 6, 1996 to September 4, 1997, and for his record to be cleared of any reference to his disqualification from the position of Foreman, account Carrier violated the current Signalmen’s Agreement, particularly Rule 40(j), when it disqualified the Claimant as a Foreman on November 7, 1996. Carrier also violated Rule 40(f) when it did not render its decision within 10 days after the unjust treatment hearing conducted on March 21, 1997. Carrier’s File No. 1058643D. General Chairman’s file No. 68409266. BRS File Case No. 10678-UP.”

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.

At issue in this dispute is the application and interpretation of Rule 40 of the Agreement between the Parties. That Rule reads in pertinent part as follows:

“RULE 40 - DISCIPLINE

- (a) Except as provided in Sections (h) and (i), an employee who has been in the service more than sixty (60) calendar days will not be disciplined or dismissed without a fair hearing. . . .
- (b) Hearing will be held as promptly as possible and within fifteen (15) calendar days from the date the charge is made against the employee or the employee is withheld from service, and at least five (5) days prior to the time fixed for the hearing the employee will be apprised of the precise charge. . . .
- (c)
- (d)
- (e)
- (f) Decision will be rendered within ten (10) calendar days from the date the hearing is concluded.

If the charge against the employee is not sustained, the employee will be compensated for the difference between amount actually earned and the amount lost in regular assignment.

If the charge is sustained, the employee will not be compensated for time lost attending the hearing. . . .

- (g)
- (h)
- (i)

- (j) Employees who consider they have been unjustly treated shall have the same right of hearing and appeal as provided hereinbefore if written request is made to their immediate supervisor within ten (10) calendar days of cause of complaint. . . .”

By letter of November 6, 1996, the Claimant was informed by the Carrier of his disqualification from the position of Signal Gang Foreman. The Organization requested a Hearing concerning the Carrier’s determination by letter of November 13, 1996. A Hearing in this matter was ultimately held on March 21, 1997. Following the Hearing, the Claimant was notified in a letter dated April 3, 1997, that sufficient evidence had been presented to uphold his disqualification.

In a letter dated June 1, 1997, the Organization filed a claim on behalf of the Claimant. In that claim it contended that the Carrier had violated Rule 40 (supra) when it failed to render a decision in the Claimant’s unjust treatment Hearing within ten calendar days of the conclusion of the Hearing. The claim was denied and subsequently appealed in the usual manner.

It is the position of the Organization that Rule 40 is clear as it applies to unjust treatment Hearings. It notes that Rule 40(j) establishes that employees who feel they have been unjustly treated “have the same right of hearing and appeal as provided hereinbefore [for employees who are granted a disciplinary hearing].” Thus, the Organization maintains that by neglecting to inform the Claimant of its determination regarding his disqualification the Carrier has violated Rule 40(f), and must now place the Claimant in the position from which he was disqualified and reimburse him for any lost income.

The Carrier points out that the Hearing closed on March 21, 1997, the transcript was completed by the transcriptionist on March 28, 1997, and the letter of determination was dated April 3, 1997, or six calendar days after completion of the transcript. It also notes that the language of 40(f) refers to employees who have been disciplined, and that disqualification is not regarded as discipline. Further, even if, arguendo, the Board were to find that Rule 40 (f) did apply in this instance, any small delay did not prejudice the Claimant. Moreover, the Carrier contends that there is no basis upon which the Board can sustain the instant claim, since it has long been established that the Carrier retains the right to determine qualifications within the bounds of reasonableness.

The Board has reviewed the language of Rule 40 in light of the instant matter. It does not find that the penalty the Organization seeks can be applied in this case. The delay, if indeed there was one, was certainly de minimus, and did not in any way disadvantage the Claimant in either a professional or monetary way. Nor is there a specific penalty established in the Agreement for delays in unjust treatment hearing scheduling or determinations. At most, the time limits included in Rule 40 should encourage both Parties to expedite such matters to the greatest extent possible. Further, once the Claimant had been found unqualified by the Carrier through the procedure established by Rule 40(j), the Board is, and has historically been, reluctant to superimpose its own judgment in lieu of the Carrier's.

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 20th day of July, 2000.