

Award No. 1449
Docket No. CL-1509

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas F. McAllister, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood that Miss Maxine Potter be assigned to cashier's position at Wisconsin Rapids, Wisconsin, and compensated for all wage losses sustained as a result of unjust disqualification."

EMPLOYES' STATEMENT OF FACTS: "Under date of December 18th, 1937, the following letter was addressed to Mr. H. J. Treutel by Agent A. A. Heger:

Mr. H. J. Treutel,
Wisconsin Rapids, Wis.

'Wisconsin Rapids, Wis.,
December 18, 1937

In accordance with the daily discussion I have had with you during the past week or ten days, I am dis-qualifying you from the cashier's position at this station.

The reason for your dis-qualification have been discussed between you and I, and I am making a statement of facts to Superintendent Rice.

You will please arrange to turn over to me, this afternoon, all cash and stations accounts.

The general clerks position 807 is now up for bulletin. You will please report for work on this position, Monday morning, December 20th, pending assignment by bulletin.

(Signed) A. A. Heger
Agent'

followed by a letter dated December 19th, 1937, reading as follows:

'Wisconsin Rapids, Wis.
December 19, 1937.

Mr. H. J. Treutel,
Wisconsin Rapids, Wis.

My instructions to you of December 18th, to work on the general clerks position are hereby cancelled.

You will continue to work on the cashiers position.

(Signed) A. A. Heger
Agent'

as clearly indicated in exchange of correspondence quoted in the railway company's statement of facts, the claim for compensation alleged to have been lost has not previously been submitted to the railway company.

- “2. Miss Potter was given a sixty day trial period, or thirty days in excess of the trial period referred to in rule 18, clerks' agreement, and after such trial period indicated conclusively and beyond question of successful contradiction that she did not have the necessary fitness and ability to fill the duties required on position of cashier, Wisconsin Rapids.
- “3. Her disqualification was just and proper under provisions of rules applicable.”

OPINION OF BOARD: Maxine Potter was declared disqualified for the position of cashier at Wisconsin Rapids, Wisconsin, on December 28, 1938, on the ground that her qualifications were not sufficient to meet the requirements of the position. She asks reinstatement and reimbursement for lost time from date of declaration of disqualification.

At the time of her assignment as cashier, it was agreed that Miss Potter would be given a 60-day trial period to determine whether she could properly perform the duties of the position, and it was further understood that she would be given all necessary assistance by the agent, consistent with the requirements of the station. It appears that Miss Potter could not fully perform the duties of cashier after the trial period. But it is her claim that the reason for her failure is that she was not properly instructed by the agent and that, if she had been so instructed and assisted, she would have been able to perform such duties. It is pertinent here to remark that the agent had a daughter who had been previously temporarily assigned to the position of cashier, and whom the agent desired to have assigned to the position.

Claimant contends that the agent stated on the first day that she appeared for work that she would not be able to qualify, because she had not performed that type of railway accounting before; and that it would take anyone a year to qualify. She further states that the agent did not assist her sufficiently or show any interest in her work. Claimant further admits that she was unable to write off freight balances on the abstracts, because she had not had proper instruction and was not furnished with a certain formula for the proper determination of overcharges and unsettled credits. She states that the agent told her that he was not familiar with this type of work and could not be of much use to her, because he had been away from it for such a long time. She could not find out from the agent about the practice of overpayment of a patron's check, and he could not explain how it was to be handled through the accounts after a refund check had been issued. It was necessary to find this out from the telegrapher. When the auditor arrived to make up a balance sheet, claimant states that he did not give her any assistance. She had received no instructions on that form. She sometimes went to other employees for help, but the agent told her that she should come to him instead. When she asked questions of the agent, he told her that he was keeping a record of all the questions she asked and was going to use this record to disqualify her as soon as possible. The agent was absent from November 19 to November 29, without making provisions for helping claimant. This was the period in which the balance sheet was to be prepared.

Claimant had previously worked as a cashier at Appleton on three or four different occasions. The duties, however, were different. A review of her statements at the hearing indicates that claimant probably possesses the understanding and ability to perform the duties in question if she were assisted generously and in good faith. The statements of various officials as to her qualifications, in our opinion, do not take into consideration the lack of advice and instruction to which she was entitled during the period, and their conclusions, even conceding that they are honest, overlook the fact that the important qualifications they mention would probably be possessed by claimant

if she had been helped to succeed by a competent and willing person. The conduct of the agent in exerting pressure on other employes to make a place for his daughter, appears from the hearing and statements of such employes. Naturally animated by a desire to secure the position in question for his daughter, it would appear plausible that he did not extend sufficient help to qualify claimant, and there seems no reason to doubt her statements that he discouraged her and made it almost impossible for her to seek information with equanimity. We have in mind that she stated no one refused to help her and that in many cases, when she asked questions, she secured the answers. But unless she was voluntarily helped, it would be of the utmost difficulty to learn methods dependent upon formulas and practice to which she was unaccustomed. More was required by the agreement than merely to answer questions, in the above fashion.

The proposition before us, therefore, is not whether claimant was qualified at the time she lost her position but whether the agreement to help and instruct her was violated in spirit or letter, or both. It is our opinion that she did not have the proper help, assistance, and information to qualify her during the trial period for the position of cashier. She is entitled to a further trial period, which, because of the special circumstances in this case, should be for 60 calendar days, under the same agreement of help, assistance, and cooperation as that under which she was first assigned. If she qualifies at the end of the said period, she will be entitled to back pay, less any income she may have earned during the period since she was declared disqualified.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there was a violation of the agreement by the carrier.

AWARD

Claim sustained in accordance with foregoing Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1941.