

Award No. 8422
Docket No. CL-8543

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. Carrier violated the provisions of the Clerks' Rules Agreement when it removed employee Ethel Carpenter from Position No. 157 at Davies Repair Yard, Milwaukee, Wisconsin and refused to recognize her right to temporary vacancies and a bulletined position, also her right to an investigation.

2. Carrier shall return employee Ethel Carpenter to the service of the Carrier and compensate her for all losses sustained from August 24, 1954 and until the violations are corrected.

EMPLOYEES' STATEMENT OF FACTS: Employee Ethel Carpenter was the regularly assigned Steno-Clerk on Position No. 35 in the Office of the Superintendent Car Department. Her seniority date in District No. 58 is June 30, 1925.

On July 19, 1954 Position No. 35 was abolished, and in accordance with the provisions of Rule 12, Employee Carpenter exercised her seniority on July 26, 1954 to Stenographic Position No. 157 in the Office of the District General Car Foreman at Davies Repair Yard, Milwaukee, Wisconsin.

On August 24, 1954, District General Car Foreman, J. J. Drinka, addressed the following communication to Employee Carpenter:

"As has been pointed out to you in several discussions, you have failed to qualify on the position of Stenographer (Position #157) in my office.

"As stated in Rule 8, paragraph (a) you will be considered furloughed as of this date."

satisfactorily perform the duties required of a stenographer to the District General Car Foreman or any other officer unless that employe, through a course of study, has acquired proficiency as a stenographer and retained such proficiency through active performance as a stenographer.

All the Carrier asked in this case after Claimant Carpenter exercised her seniority to Position 157 was that she properly discharge the duties of that stenographic position. This she was unable to do. No action of the Carrier can possibly alter that fact. The Carrier has not acted unfairly nor in a discriminatory manner. There is no basis for this claim and the Carrier respectfully requests that it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset we must dispose of a question raised by Carrier that the Organization, under the provisions of Article V of the Agreement of August 21, 1954, was "obliged to file their ex parte submission with your Honorable Board on or before March 21, 1956"; and not having done so, Carrier asserts "this claim is barred."

This question was disposed of in Award 7850, with the same referee. As we held in that award, we will hold here that by its letter of March 14, 1956 "citing the dispute at issue and serving notice of its intent to file an ex parte submission covering the dispute within 30 days, the Organization 'instituted proceedings' within the meaning of Article V of the applicable agreement."

We will next treat with the final portion of Part 1 of the claim: "and refused * * * her right to an investigation." Organization cites Rule 22(g), reading:

"An employe, irrespective of period employed, who considers himself unjustly treated, other than covered by these rules, shall have the same right of investigation, hearing and appeal, in accordance with preceding sections of this rule, provided written request, which sets forth employe's complaint, is made to the immediate superior officer within thirty (30) days from cause of complaint."

While we ruled on Rule 22(g) in Award 8233, the circumstances here are different. Carrier says its action of furloughing Claimant was taken under Rule 8 (a), reading:

"When an employe bids for and is assigned to a permanent vacancy or new position he will be allowed thirty (30) days in which to qualify and will be given full cooperation of department heads and others in his efforts to do so. However, this will not prohibit an employe being removed prior to thirty (30) days when manifestly incompetent. If an employe fails to qualify he shall retain all seniority rights but cannot displace a regularly assigned employe. He will be considered furloughed as of date of disqualification and if he desires to protect his seniority rights he must comply with the provisions of Rule 12(b)."

Argument is offered on behalf of Carrier "that Rule 8 is a specific rule that is all inclusive as to the rights of the parties in cases of this nature.

In numerous awards we have recognized the universal principle that a specific rule will always control over a general rule leaving the latter to cover those fields not covered by the specific rule."

We will agree with Carrier's position and hold that Rule 22(g) is not applicable in the instant case because the circumstances here come specifically within the coverage of Rule 8(a).

The positions and arguments of the parties are a part of the record in this case and need not be repeated here. We have carefully examined the entire record, as well as prior awards cited by or in behalf of the parties.

It is quite clear that Claimant was not sufficiently skilled as a stenographer to qualify for position 157 she had secured by exercising her seniority.

It is equally clear that Carrier did not violate the agreement by refusing to permit her to work position 158 or position 125 because of lack of proper qualifications.

The record also discloses that Claimant applied for position 189 on April 8, 1955 and was assigned to the position on April 11, 1955. Carrier states that on April 26, 1955 "she gave up the position, stating she did not wish to continue thereon."

A denial Award is in order.

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 Employee involved in this dispute are respectively Carrier and Employees 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1958.