

Award No. 14183
Docket No. CL-15113

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

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

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5616) that:

(a) The Carrier violated the Clerks' Agreement when it disqualified Mrs. M. Ecklund from Report Clerk-Typist Position #191 at South Chicago Station on June 19, 1963 and

(b) The Carrier shall now be required to compensate Mrs. Ecklund for wage loss sustained beginning with June 20, 1963, and continuing until such time as she is restored to Report Clerk-Typist Position #191.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Ecklund was first employed as a Clerk at the South Chicago Agency on December 15, 1942. She applied for and was awarded Report Clerk-Typist Position #191 on May 21, 1963, which she occupied until June 19, 1963.

On June 14, 1963 Mrs. Ecklund was cited by the Carrier's Agent to attend a hearing to discuss her qualifications for the position here involved. Employees' Exhibit No. 1.

The hearing was conducted on June 18, 1963 and as a result Mrs. Ecklund was furnished with a Notice of Discipline, signed by Agent Terry, advising that she was disqualified on Position #191 effective 4:30 p.m., June 19, 1963. Employees' Exhibit No. 2.

Copies of statements made a matter of record at the hearing are attached hereto and made a part hereof designated as Employees' Exhibit No. 3.

On August 1, 1963, claim was filed with Agent Terry. Employees' Exhibit No. 4.

On August 16, 1963, Agent Terry declined the claim. Employees' Exhibit No. 5.

tion and instruction, to the extent that can reasonably be expected by any employe on a new job as she had been given previous to the assignment to Position #191, she herself failed to perform as could reasonably be expected of any employe including herself.

The agreement has not been violated. Mrs. Ecklund is not entitled to pay for time allegedly lost through her own failure and to exercise her rights under the agreement.

OPINION OF BOARD: Claimant was disqualified on Position No. 191 effective at 4:30 P. M. on June 19, 1963. She had bid for and was assigned to Report Clerk-Typist Position No. 191 on May 21, 1963. On June 14, 1963, Carrier's Agent directed her in writing to attend a hearing on June 18, 1963, to discuss her qualifications for that position.

The hearing was conducted by her supervisor, the Agent who stated for the record, as follows:

"Mrs. Ecklund, on May 21st, you were awarded Position #191 in the office of Agent at South Chicago and have now been working that position for four full weeks, and to date I find that approximately only 65% of the work assigned to that position is being completed. The Tonnage Report by Shippers or Consignees has not been started, nor the Tonnage report for destination has had nothing added to it since your assuming this position. At the time you were awarded the position, the Company felt that it was necessary to be extremely tolerant due to the fact that you had been absent on sick-leave for about 16 months. On the morning of May 27th, 1963, I asked you to come into my office to discuss your inability to keep up with the work, to which you countered with the statement that did I know that you were an arthritic. It was consequently hoped that the arthritus condition would subside and that we would find an improvement in your typing ability. To date, as stated previously, you have not been able to accomplish this typing of permits and the preparation of the In Transit Report in time to allow you to put forth any effort on the two tonnage reports previously mentioned. In addition, it has been found necessary to have Miss Weeks prepare the May tonnage report, one of the reports to the Bureau of Mines U. S. Gov't and on occasion to assist in typing up permits in order to get them out in the required time. Mrs. Ecklund you may have a rebuttal to this statement."

He was the only witness on behalf of the Carrier, but he refused to submit to cross-examination by Claimant's representative. His reply was, "I am not the one being tried for my inability—you may ask Mrs. Ecklund questions." Thus, the Hearing Officer was not only the prosecutor, witness and judge, but as judge he excluded all attempts to question his veracity.

Carrier argues that Claimant was properly disqualified because she was completing approximately only 65% of the work assigned to that position. This may have been so. But the evidence shows that Claimant did everything requested of her in which she was instructed.

There is no complaint about the work which Claimant was doing. When she was asked when she felt she would be able to do all the work attached to the position, she replied, "When I am shown I will be able to accomplish the work." There is also no categorical denial by the Agent that he refused to assist and to explain the work requirements to the Claimant.

The Agent stated that the reason Claimant was not "shown any further reports" was because she was "having considerable difficulty in accomplishing the portion of the work prescribed * * *" To this Claimant testified: "Not any more than anyone else would starting on a new job."

Claimant was disqualified twenty-nine (29) days after she was assigned to the position. Rule 16 provides that employes entitled to bulletined positions are allowed thirty (30) calendar days to qualify. Paragraph (b) of that Rule says:

"(b) When it is definitely determined, through hearing if desired, that the employe cannot qualify, he may be removed before the expiration of thirty (30) calendar days * * *" (Emphasis ours.)

The burden of proof is upon Carrier. It is not "definitely determined" from the evidence that Claimant could not have qualified if she was properly and adequately instructed.

Position No. 191 was abolished on December 5, 1963. Claimant is entitled to be compensated for loss of wages resulting from her disqualification on Position No. 191 from June 20, 1963, to December 5, 1963, less any earnings she may have received from other employment during said period.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1966.

CARRIER MEMBERS' DISSENT TO

AWARD 14183—DOCKET CL-15113

The record fully supports carrier's action in disqualifying claimant in this case. It was undenied that claimant's inability to keep up the work was discussed with her both in private (R., p. 12) and in the presence of a witness

(R., p. 15). An arthritic condition was offered as an excuse on one occasion for her failure to accomplish all of the work. (R. p. 12) Claimant did not deny that after some 27 days on the position she was only performing 65% of the duties, but admitted she did not have any idle time. (R., p. 14) In view of these facts it is difficult to see where additional time could be obtained in which to perform the remaining 35% of the work.

Even though claimant testified to her long experience, it is significant that in the three instances where carrier hired new employes they were able to assume all the duties of the position within two or three weeks.

Award 14183 is in error, and we dissent.

W. M. Roberts

G. L. Naylor

R. A. DeRossett

C. H. Manoogian

**LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT TO
AWARD 14183, DOCKET CL-15113**

The record, taken as a whole, does not and cannot support the Carrier's action herein.

The evidence unquestionably proved that Claimant was accomplishing all of the work of the position which had been shown to her. It would be rather ridiculous to contend that newly hired employes could, or did, do more than that if given the same consideration. Moreover, the Carrier admitted that the "same degree of ministration" was not given Claimant (R. p. 21).

The Award is entirely correct and the dissent does not, at all, detract from the soundness thereof.

D. E. Watkins, Labor Member