

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19485
Docket Number CL-19662

Alfred H. Brent, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7086)
that:

1. Carrier violated Rules 7 and 18 of the Clerks' Agreement when it arbitrarily and capriciously disqualified Mrs. Donna A. Spies from the position of Route and Car Assignment Clerk #073, St. Louis Terminal, effective December 4, 1970.

2. Carrier shall now be required to remove all notations of such disqualification from Mrs. Donna A. Spies' service record and compensate her in the amount of \$31.47 per day, and in addition, all general wage increases beginning December 6, 1970 and continuing until such time she has been returned to active service.

OPINION OF BOARD: This case involves the disqualification of the Claimant, Mrs. Donna Spies, from her job opportunity as a Route and Car Assignment Clerk. The record shows that the Claimant was on the job for a total of 26 working days out of the 35 days she was on the assignment. She performed from 50% to 65% of her duties accurately, including those outside the category that the Carrier required her to perform for part of each work day. It appears from the evidence in the record that during her 30 day trial period the claimant may not have received that cooperative guidance and assistance contemplated in Rule 7 of the Agreement between the parties. The Organization claims that the Carrier must show affirmatively that it cooperated fully in the efforts of the claimant to qualify. While the Carrier does have the ultimate decision making power to determine whether an employee is qualified, and this final decision, if not arbitrary or capricious, should not be interfered with, where the Carrier has contractually bound itself to fully cooperate with employees in their efforts to qualify for bulletined positions, then the Carrier does have the burden of demonstrating that it satisfied the condition precedent before it is free to make that ultimate decision. (See Award #12245 (Dorsey)). The Carrier's contention that it is relieved from the burden of proof because the Claimant did not make clear her own personal complaint does not relieve the Carrier of its obligation.

The Board finds that the record does not show such cooperation and guidance by the Carrier as would mandate an affirmation of the decision by the Carrier to disqualify the Claimant. The Claimant's disqualification should be expunged from the record.

Shortly after the Claimant's disqualification the Carrier abolished the job in question. The Organization does not challenge the right of the Carrier to do so. The Claimant should be made whole for those days she would have worked from the date of her disqualification until the job was abolished.

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 Employees 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 violated.

A W A R D

The Claim is granted as modified above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.