

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21596
Docket Number CL-21458

David C. Randles, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTES: (
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8032) that:

1) The Carrier has violated the established practice, understanding and rules of the Brotherhood, specifically Rule 6-A-1, 7-A-2 and 9-A-2, when they illegally and arbitrarily removed Clerk Paul Hewson from his position as Crew Dispatcher (5-C-1) effective December 23, 1974 and forced him to exercise his seniority to a lesser paying position in the Timekeeping Department without a fair and impartial hearing.

2) The Carrier will reinstate Clerk Paul Hewson to his position as Crew Dispatcher (5-C-1).

3) Effective December 23, 1974 and continuing until such time as the violation is corrected, the Carrier will pay Paul Hewson the difference between the rates of pay that he is now receiving in the Timekeepers Office or any other position he subsequently covers and the rate of pay he was receiving before he was illegally removed from his position as Crew Dispatcher (5-C-1). This to include any and all monies he would otherwise be entitled to including any positions he would have elevated to while working as a 5-C-1 in the confines of the Crew Dispatchers Office.

OPINION OF BOARD: The factual situation in this case shows that Claimant Paul Hewson was assigned on October 11, 1974 to a 5-C-1 Clerk position in Carrier's Manager-Transportation Manpower Office at Jamaica, New York. By letter dated December 16, 1974 Claimant Hewson was notified by the Manager-Transportation Manpower that he was disqualified from the 5-C-1 Clerk position effective December 22, 1974 "at the completion of your vacation". On December 17, 1974, claimant requested a hearing regarding the disqualification. Carrier rejected the request for a hearing and the dispute which is the subject of this case ensued.

In presenting and progressing this dispute, petitioner has alleged that Rules 6-A-1, 7-A-2 and 9-A-2 were violated. We have examined each of the above-mentioned Rules and cannot find any violation thereof in this case.

Rule 6-A-1 concerns the assessment of discipline. Our Board has repeatedly held that disqualification is not an assessment of discipline. See Award No. 17293 (Yagoda) involving these same parties. Also see Award No. 20045 (Blackwell).

Rule 7-A-2 concerns itself with the handling of injustices other than discipline. However, there is no provision in this Rule 7-A-2 for a so-called "unjust treatment" hearing as is found in many other Rules Agreements. Rather, Rule 7-A-2 provides that when an employee considers "that an injustice has been done with respect to any matter other than discipline," it is the responsibility of the employee - or the "duly accredited representative" on his behalf - to "present the case in writing in the same manner as prescribed in Rule 4-D-1" (Time Limit On Claims Rule). Therefore, claimant's request for a formal hearing relative to his disqualification is not supported by the Agreement Rules here involved.

Rule 9-A-2 is the continuation and/or change Rule of the Agreement and obviously is not involved in this case.

Petitioner in this case has not challenged Carrier's determination of the qualifications of Claimant Hewson. Rather, they have challenged the "manner in which Mr. Hewson was removed from his position." In this regard, the record reveals that on at least five (5) separate occasions, beginning October 22, 1974, claimant was given written notices of the commission of errors by him on his assignment. These notices each contained the admonition and advice to contact the Assistant Manager if there were any extenuating circumstances involved or if the cited error was not claimant's responsibility. No contact was made. Claimant can not now argue that his disqualification came as a surprise or that no reason was given for the action.

There is nothing in this record to suggest that Carrier's action was arbitrary or capricious. The manner of handling conforms to accepted modes of determination of qualifications and notification of disqualification. Therefore, we must deny this claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1977.