

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22427
Docket Number CL-22308

James F. Searce, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8492) that:

1. Carrier violated the Agreement between the parties when it held clerical employees Orville Whitehead and Gerald Wolfe off of their regular assignments on April 7, 1976, in order for them to appear as witnesses at an unjust treatment hearing on behalf of fellow employee, D. C. Claxton.

2. Carrier shall now be required to compensate clerical employees Orville Whitehead and Gerald Wolfe for eight hours pro rata pay at the established rate of their assigned positions for April 7, 1976.

OPINION OF BOARD: This case is similar to many heretofore disposed of by the Board where the Organization has called for employees as witnesses in support of its position, and where the Carrier accedes to the presence of employees, but without compensation. Notwithstanding the Petitioner's arguments to the contrary, the pertinent Agreement is devoid of specific provisions calling for compensation for employees called by the Organization as witnesses. While that factor would appear to be dispositive of the claims raised in this case, this Board will be remiss if it does not bring attention to certain aspects of the execution of the hearing itself: The circumstances out of which this dispute arose involved the declination by a supervisor of an employee's contended rights of displacement. The affected employee grieved the action and a hearing was convened per Rule 27. The hearing officer was the supervisor involved in the denial of the employee's request. At the outset of the proceeding, the hearing officer made himself unavailable for examination by the affected employee or his representative, and yet used this same authority to dispute on the record a claim by the employee:

(H/O) Mr. Claxton, do you have a representative?

(Emp) Yes.

(H/O) Your letter states you have been unjustly treated. This time has been set aside to hear anything you have to offer in connection with your request for the hearing. You may proceed.

(Emp) First question is that I would like to know how you arrived at the conclusion that I did not have sufficient fitness and ability in 35 minutes?

(H/O) I am the hearing officer in this case to hear anything you have to offer concerning your charge of unjust treatment. I am not here to testify either for or against you.

(Emp Rep) Let the record show that on Carrier's Exhibit A, Mr. Vierrether at 9:35 a.m. declined Mr. Claxton's request to exercise seniority. Mr. Claxton, when did you submit this request to Mr. Vierrether?

(Emp) Approximately 9:00 a.m. of the same morning.

(Emp Rep) Let the record show that in 35 minutes Mr. Vierrether determined that Mr. Claxton did not meet the fitness and ability qualifications of Position #4. For the record, we would like to read the character of work from the bulletins for Position #4.

* * *

(Emp) I would like to add something to that. I don't understand how Mr. Vierrether, having been here approximately 2 months on the job, coming from a completely different area, and my never having worked under him or with him, can say I am not qualified for the job.

(Emp And I would add the record shows clearly that this
Rep) determination was made within 35 minutes after
receiving notice of Mr. Claxton's desire to displace
on Position #4.

(H/O) In the interest of establishing the sequence of
events

(Emp You have stated that as hearing officer you will not
Rep) testify. If you want to testify, I have several
questions to ask.

(H/O) I do not feel I am testifying for or against Mr. Claxton.
I feel that within my position as hearing officer that
establishing procedures of this hearing and then stating
the sequence of the event leading up to the hearing
is proper. Carrier's Exhibit A was received at 8:00 a.m.
I do not feel this is testifying either for or against
Mr. Claxton.

It was after this set of events that the Organization asked
for testimony by the Claimants. The hearing was recessed until the
following day at which time the Claimants appeared and gave testimony
for 15 and 18 minutes, respectively, for which they were required to
mark off the job for 8 hours. It seems sufficiently clear that
whatever case the Organization would be able to establish would have
to be based upon testimony of such witnesses; it could hardly demand
testimony by the hearing officer and apparently could not foreclose
the hearing officer's putting on the record whatever he saw fit to
state.

We are well aware that it is not within the province of the
Board to consider questions of equity; we are equally aware that
questions of "due process" are not properly before us. We are obliged
to look to the provisions of the Agreement and to the record of the
case at hand and will not do otherwise here. While we may have some
reservations over the events leading to this point, we find no basis
under the Agreement to affirm the Claims herein.

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

Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.