

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23424
Docket Number CI-23395

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8999) that:

(1) Carrier violated the Clerks' Rules Agreement in Seniority District No. 7 on July 24, 1978 when it falsely accused employee E. H. Pope of accepting a leave of absence other than as defined by rule, rather than holding an investigation to develop the facts and circumstances surrounding the events in question.

(2) Carrier further violated, and continues to violate the Agreement when it removed Pope from service and denied him the right of investigation in line with the provisions of Rule 22(f).

(3) Carrier shall be required to restore employee Pope to his former position with all seniority rights and other right unimpaired and compensate him for all wage loss sustained from July 24, 1978 and continuing for each workday thereafter.

(4) Carrier shall be required to make employee Pope whole for any money he was required to spend for medical, dental or hospital service and other benefits for which he would otherwise be covered beginning on July 24, 1978 and continuing until he is restored to service.

(5) Carrier shall be required to pay interest in the amount of seven and one-half ($7\frac{1}{2}$) percent on all wage loss sustained from July 24, 1978 and continuing until he is restored to service.

OPINION OF BOARD: Except for Carrier's arguments on procedural defects, this dispute falls on all fours with the disputes resolved by Referee Paul C. Carter in Award 22479 and this Referee in Award 23119.

Carrier argues that Claimant Pope did not comply with Rule 22(f) by filing his request for hearing with an officer of the Carrier other than his immediate superior officer, however, the request was filed with the officer who notified him of his dismissal. The Carrier also contends the Organization did not make timely appeal of the claim under Rule 36. The Board finds the appeal was filed within 60 days from the date of the Carrier's letter notifying claimant he had forfeited all seniority.

The Board concludes that Awards 22479 and 23119 are controlling in this dispute and awards reinstatement of claimant with full seniority and all other rights unimpaired with back pay as specifically agreed upon by the parties in Rule 22(e).

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 Employee involved in this dispute are respectively Carrier and Employee 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

Claim sustained in the manner and to the extent set forth in the Opinion.

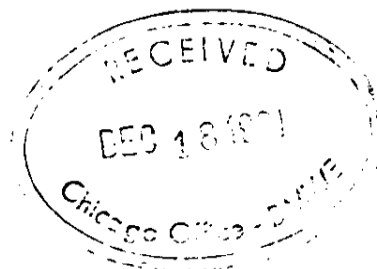
NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 23424

DOCKET NO. CL-23395

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

NAME OF CARRIER: Chicago, Milwaukee, St. Paul and Pacific
Railroad Company

Upon application of the Carrier involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

It is well established that the purpose of an interpretation is to explain and/or clarify the Award as originally made and not to make a new Award.

The original Award, upon which an interpretation is sought, held that the Carrier violated the agreement. This interpretation confirms and reinforces that decision.

The Carrier contends that the language in the first sentence of the second paragraph of the "Opinion of the Board" rewrites Rule 22(f) and materially changes its application. It was not the intent of the Board to rewrite the rule and to eliminate that contention we will in this interpretation delete that sentence from the Award. And, the third word, "also", is deleted from the second sentence of that paragraph.

To eliminate any further misunderstanding of the Award and to expedite compliance of this two year old Award, the penultimate paragraph of the "Opinion of the Board" is deleted and the following substituted in its place:

"The Board concludes that Awards 22479 and 23119 are controlling and so concludes that the Carrier violated Rule 22(a) by not preferring charges against Claimant and not conducting a hearing as provided in the rule, and awards reinstatement of Claimant with full seniority and all other rights unimpaired with back pay as specifically agreed upon by the parties in Rule 22(e)."

Referee A. Robert Lowry, who sat with the Division as the Neutral member when Award No. 23424 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *Nancy J. Devel*
Nancy J. Devel - Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1983

