NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23923
Docket Number CL-23864

Martin F. Scheinman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9330) that:

1) Carrier violated the Clerks' Rules Agreement at Minneapolis, Minnesota when it failed and/or refused to award Chief Clerk Position No. 55010 to Employe W. R. Heyne.

2) Carrier further violated the Clerks' Rules Agreement when it denied him the right of investigation in line with the provisions of Rule 22(f).

3) Carrier shall now be required to compensate Employe W. R. Heyne an additional eight (8) hours at the pro rata rate of Chief Clerk Position 55010 for March 26, 1979 and continuing for each workday of that position until the violation is corrected.

4) Carrier shall further be required to pay interest in the amount of seven and one-half (7½) percent on all monies due as stated in Item (3) above, payable on each anniversary date of this claim.

OPINION OF BOARD: Claimant, W. R. Heyne, is the regularly assigned occupant of the Relief Assistant Wire Chief Position No. 72200 at Minneapolis, Minnesota. He has seniority date in Seniority District No. 5 of March 22, 1951.

On March 14, 1979, Bulletin No. 52 was issued to the employes Seniority District No. 5 advertising Chief Clerk Position No. 55010 Material Department at St. Paul, Minnesota.

On March 23, 1979, Bulletin No. 55 was issued to the employes in Seniority District No. 5. The Bulletin awarded Position 55010 to L. M. Neely. Neeley has a seniority date of January 11, 1964.

On March 26, 1979 Claimant requested an unjust treatment investigation under the provisions of Rule 22 (f) account of not being awarded Position 55010. This request was made again on April 1, 1979.

Carrier denied Claimant's request for an unjust treatment investigation. It asserted that an unjust treatment hearing may be invoked only for an "offense occurrance or circumstance not covered by a rule in the Clerks' Agreement." It took the position that since Claimant's application for Position 55010 was denied pursuant Rule 7 of the Agreement, that Rule 22 (f) was not applicable in Claimant's case.

The Organization argues that Carrier's action violated Rule 3, Seniority; Rule 7, Promotion; and Rule 22 (f), Discipline and Grievances. The Organization takes the position that the entire controversy could have been eliminated if Carrier would have provided the requested investigation. There, Claimant would have had the opportunity to establish whether he did or did not possess sufficient fitness and ability to perform the job.

The crux of this matter is whether Carrier was obligated to provide Claimant with an unjust treatment hearing. It is undisputed that Claimant's request was instituted in a timely manner.

This is not the first time that this issue has been presented to this Board. Awards of this Division, involving these same parties, have been issued by resolving many of the questions of when an unjust treatment hearing is required. Clearly, it is now established that such a hearing is appropriate, and an employe is entitled to receive one provided he or she requests it in a timely fashion, when the allegation is that the employe lacked fitness and ability to perform the job. See Awards 8233, 9415, 9854, 18922 and 23283. In fact, Referee Paul C. Carter set forth, in great detail, why Carrier's arguments in support of its position that a hearing is not required, are without merit. Nothing presented here convinces us that Award No. 23283 is incorrect.

Stated simply, we are pursuaded that this issue has been resolved once and for all.

Given these prior awards involving the same parties, we will sustain parts (1) and (2) of the claim. With regard to part (3) of the Claim, Carrier shall also compensate the Claimant the difference between what he earned and what he would have earned, if any, when it failed to award him Position No. 55010. Part (4) of the Claim is denied.

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 the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June 1982.