

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23924  
Docket Number CL-23887

Martin F. Scheinman, 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-9341) that:

1) Carrier violated, and continues to violate, the Clerks' Rules Agreement at Milwaukee, Wisconsin when it arbitrarily disqualified Employee J. Masnak on Invoice Clerk Position No. 51290.

2) Carrier further violated the Agreement when it refused to grant Employee Masnak an investigation as per his request in line with the provisions of Rule 22(f).

3) Carrier shall now be required to recognize Employee Masnak's seniority and promotional rights by assigning him to Position No. 51290 and compensating him for an additional day's pay at the appropriate rate for each workday he is denied his contractual rights to that position commencing on May 11, 1978.

4) Carrier shall further be required to pay interest in the amount of seven and one-half (7½) percent per annum on all wage loss sustained as set forth under Item (3) above until the violation is corrected.

OPINION OF BOARD: Claimant, J. Masnak, is regularly assigned occupant of the Storehelper Position 51980 in Seniority District No. 4. He has a seniority date of January 10, 1974.

On March 29, 1978 Carrier issued Bulletin No. 144 to the employees in District No. 4 advertising a vacancy on Invoice Clerk Position 51290 at the Milwaukee Shops, Wisconsin. On April 7, 1978, Carrier awarded Position No. 51290 to J. E. Baxter. Baxter's seniority date is July 23, 1974.

The Organization contends that Carrier violated Rule 3, Seniority; Rule 7, Promotion; and Rule 22 (f), Discipline and Grievances when it failed to award Claimant the position. It also asserts that Carrier's refusal to provide Claimant with an unjust treatment hearing violated Rule 22 (f) of the Agreement.

Carrier, on the other hand, insists that it has not violated the Agreement. It contends that it has the right to determine whether an employee possesses the requisite fitness and ability to perform the work of the position. Carrier also claims that Claimant is not entitled to an unjust treatment hearing

in this matter because such a hearing is required only when the alleged unjust treatment is for an offense, occurrence or circumstance not covered by a rule in the Agreement. Finally, Carrier maintains that Claimant's request for an unjust treatment investigation was untimely.

Rule 22 (f) states, in relevant part, that an employee "shall have the same right of investigation and appeal, in accordance with preceding sections of this rule, provided written request, which sets forth employee's complaint, is made to the immediate superior officer within fifteen (15) days from cause of complaint".

The time limit set forth in Rule 22 (f) are clear and unambiguous. Their import is readily discernable. Any employee who desires an unjust treatment hearing must request that hearing in a timely manner. If he or she does not, then the right to the unjust treatment hearing is waived.

Here, the cause of the complaint was Carrier's award of Position 51290 to J. E. Baxter on April 7, 1978. This was done in Bulletin No. 153.

Yet, Claimant made no request for an unjust treatment hearing until April 27, 1978. This was twenty (20) days from the cause of the complaint. As such, we must conclude that Claimant's request was untimely filed.

We are persuaded that Claimant's request, because it was five (5) days late, compels us to deny the claim as presented. This is because the parties' intended the unjust treatment hearing to be the time during which Claimant would have had the opportunity to introduce evidence and argument in support of his position that he possessed the requisite fitness and ability to perform the work of the position. By failing to request the hearing in a timely fashion, and thereby precluding himself from having the hearing, we are compelled to determine that Claimant may not, in this particular case, question Carrier's determination regarding his fitness and ability. Therefore, we will dismiss the claim as presented.

Given all the foregoing, it is unnecessary for us to address any of the other contentions introduced by the Organization.

**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

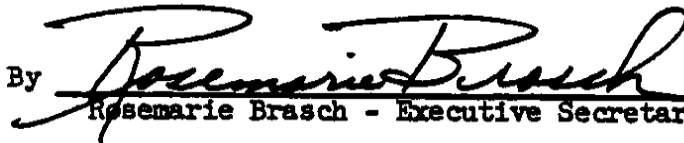
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Executive Secretary

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