

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert Silagi, Referee

Award Number 24380  
Docket Number MS-24501

PARTIES TO DISPUTE: { Marvin J. Sinwald  
{ Norfolk and Western Railway Company

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of Marvin J. Sinwald's intention to file an ex parte submission on Dec. 24, 1981 covering an unadjusted dispute between Marvin J. Sinwald and the Norfolk & Western Railway Company involving the question:

Unjust Treatment under Rules 28 and 10 of the Clerks Master Working Agreement."

OPINION OF BOARD: Claimant entered the service of the former Pennsylvania Railroad in 1953. In 1964 the Sandusky Line of the Pennsylvania Railroad became part of the Norfolk and Western Railway Company and Claimant became an employee of that Carrier. In 1980, as a result of the abolishment of his position, Claimant exercised his seniority displacement rights under Rule 20 of the Master Agreement of Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, and displaced to the T.O.F.C. (Piggyback) Clerk position effective July 28, 1980. On August 8, 1980 pursuant to Rule 10, Claimant was notified that he was disqualified from the position at the T.O.F.C. ramp offices.

Rule 10-Qualifying, states that:

"(a) An employee awarded a bulletin position or who exercises displacement rights thereon shall be allowed forty (40) working days with pay in which to qualify except when it is evident he will not qualify for the position he may be removed from the position at any time before the expiration of the qualifying period of forty working days."

The Carrier notes that Claimant was removed from the position of clerk at the T.O.F.C. ramp after ten days because of lack of aggression in making decisions on correct procedures, failure to take a yard count and other reasons which in effect was costing the Carrier "untold dollars".

Rule 28-Unjust Treatment states:

"An employee who considers himself unjustly treated, otherwise than covered by these rules, shall have the same right of investigation, hearing, appeal and representation as provided in these rules..."

The key to the problem herein is whether Claimant has a right to a hearing under Rule 28 to review his disqualification in accordance with Rule 10. We need not linger long on this dispute inasmuch as the same arguments have been made by the same Carrier and Organization involving the same Rules Agreement in at least five prior Awards of Public Law Board No. 1790. In each case the Board held in the negative, that is, Rule 28 applies only when the unjust treatment is not covered by a rule. Given that situation these five prior awards are res judicata to this case. (See Third Division Award 19007 - Ritter). Accordingly this claim must be 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 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: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.

