

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24614  
Docket Number CL-24247

Ida Klaus, 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-9480) that:

1) Carrier violated the Clerks' Rules Agreement at Winona, Minnesota when it refused to permit Employee J. R. Ives to exercise displacement rights to Chief Clerk Position No. 45240 held by a junior employee on April 28, 1980.

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 employee J. R. Ives an additional eight (8) hours at the pro rata rate of Chief Clerk Position No. 45340 for April 29, 1980 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 (7 1/2) percent on all monies due as stated in Item (3) above, payable on each anniversary date of this claim.

OPINION OF BOARD: The claim asserts a violation of the Clerks' Rules Agreement as to the Claimant by (1) refusing to allow him to exercise his right to displace a junior employee and (2) denying him a Rule 22(f) "unjust treatment" investigation and hearing. It seeks compensation for an additional eight hours per day for the period of the continued alleged violation, plus interest.

The Claimant was the regularly assigned occupant of the Rule 1(b) position of Agent at Winona, Wisconsin, until May 1, 1980, when he was replaced by a 1(b) Agent from Janesville. Under the Agreement, only expressly enumerated rules are made applicable to 1(b) positions.

Rights of employees who are separated from those positions are governed only by Memorandum No. 6, which provides in pertinent part:

- "1. An employe voluntarily relinquishing a position listed in Rule 1(b) ... will not be able to exercise seniority to displace a junior employe.
2. The same principle will apply in connection with an employe who is removed from a position listed in Rule 1(b) ....
3. When an employe occupying a position listed in Rule 1(b) ... is affected by force reduction or abolishment of his position, he may exercise his seniority rights in accordance with the provisions of Rule 12(a)."  
(Underscoring added)

The root issue in dispute arises from the conflicting views as to which paragraph of Memorandum No. 6 applies to the Claimant's separation from his 1(b) position. If, as the Carrier contends, he was "removed" for fault on his part, i.e., improper work performance, he would concededly have no displacement rights to the junior incumbent's Chief Clerk position. If, as the Organization maintains, he was "affected by force reduction", he was plainly entitled to that position. The issue is thus one of conclusions reasonably to be arrived at from the record facts before us.

The Board finds substantial credible evidence to support the Organization's position. The Carrier's efforts to rebut that evidence to show removal for unsatisfactory work performance are unconvincing. We note particularly that the Claimant was given the work performance reason days after he had been expressly reassured to the contrary. Moreover, the Carrier's belated assertion in its reply memorandum that the "force reduction" concept did not apply in this instance, has no apparent relevance and is without any support in the record.

We conclude that the Claimant was released from his position by reason of "force reduction" within the meaning of Memorandum No. 6. The denial of his displacement right to the Chief Clerk position thus violates the Agreement. Item No. 1 is sustained.

With respect to whether the procedures of Rule 22(f) were available to the Claimant, we find the evidence unclear as to the precise nature of the particular conduct he believed he was entitled to have investigated and clarified. Accordingly, we cannot sustain Item No. 2. In our mind, however, the Item No. 2 complaint, insofar as it may relate to the improper work performance issue, would appear to be resolved by the disposition of Item No. 1.

As to Item No. 3, we agree with the Carrier that the monetary compensation claimed is inappropriate. On this record, the remedy sought exceeds the bounds of what is reasonable vindication of the right denied. We will award the Claimant the compensation he would have earned on the position from which he was barred, less any amount he earned in his other employment.

As Item No. 4 (interest) has no support in the record and no rational basis in the Agreement, it 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 Employees 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 accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.