

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25169
Docket Number MS-25296

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Lorraine R. Caserta
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on July 8, 1983, covering an unadjusted dispute between me and the Consolidated Rail Corporation.

The claim involves my disqualification on to position No. 85 as a steno-clerk on March 12, 1982. This disqualification was in violation of Rule 9 of the agreement between Consolidated Rail Corporation and the Brotherhood of Railway, Airline and Steamship Clerks, by not allowing me the full thirty (30) days to qualify in the position. In addition, the carrier violated Rule 9 by arbitrarily disqualifying me from the position. Further, the carrier is in violation of Rule 44 of the aforementioned agreement inasmuch as they refused to grant an unjust treatment hearing to me concerning my allegations regarding Rule 9.

Please also be advised, that pursuant to the rules of the National Railroad Adjustment Board I am designating Thomas J. Caserta, Jr., Esq., whose address appears above as my representative and ask that all future correspondence be forwarded to him."

OPINION OF BOARD: Claimant, Lorraine Caserta, was disqualified on position No. 85 as Steno-Clerk on March 12, 1982. Claimant alleges that Carrier's action violates Rules 9 and 44 of the Agreement.

The basic facts are not in dispute. On February 17, 1982, Claimant displaced into Position 85. Carrier on March 12, 1982, and prior to the expiration of 30 days, disqualified Claimant. The stated reason was that Claimant was unqualified to take investigation, which was part of the advertised duties of the position.

Claimant disagreed with Carrier's determination. She argued that she was qualified to perform the job.

Claimant requested a hearing under the terms of Rule 44. Carrier denied the request.

Claimant argues that Carrier's failure to allow her the full thirty days to qualify violates the terms of Rule 9. In addition, Claimant asserts that Carrier's failure to provide her with an unjust treatment hearing violates Rule 44.

Rules 9 and 44 state, in relevant part:

"RULE 9 - TIME IN WHICH TO QUALIFY

(a) Employees awarded bulletined positions or exercising displacement rights will be allowed thirty (30) days in which to qualify and failing to qualify may exercise seniority under Rule 18(d). The thirty (30) days may be extended by agreement between the Local Chairman and the proper Company official.

(b) When it is evident that an employee will not qualify for a position, after conference with the Local Chairman, he may be removed from the position before the expiration of thirty (30) days and be permitted to exercise seniority under Rule 18(d). The Division Chairman will be notified in writing the reason for the disqualification."

"RULE 44 - UNJUST TREATMENT

An employee who considers himself unjustly treated, otherwise than covered by these rules, shall have the same right of investigation, hearing or appeal and representation as provided in Rules 42 and 43, if written request which sets forth the employee's complaint is made to his supervisor within thirty (30) calendar days of cause of complaint." (Underscoring added)

The claim must be denied.

First, Rule 9 specifies that Carrier may remove an employee from a position, after a conference with the Local Chairman, when it is evident that an employee will not qualify for the position. Thus, in such an instance, it is unnecessary for Carrier to wait the full 30 days to disqualify an applicant. (See Award 24045.)

Here, the record evidence amply supports Carrier's conclusion that Claimant would be unable to qualify. Accordingly, her disqualification was not premature.

As to Claimant's desire for an unjust treatment hearing, the specific language of Rule 44 indicates that such a hearing is not available to an employee in every instance. Instead, it is only available where the issue is not addressed in some other portion of the Agreement. This is the meaning of the phrase, "otherwise than covered by these rules".

The issue of disqualification within thirty days is specifically addressed in Rule 9(b). The parties have agreed that Carrier has reasonable discretion in this area. As such, the issue is covered by the rules of the Agreement and, therefore, there is no basis for requiring an unjust treatment hearing.

Accordingly, neither Rules 9 nor 44 were violated when Carrier disqualified Claimant from Position 85. Therefore, the claim must be denied in its entirety.

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.

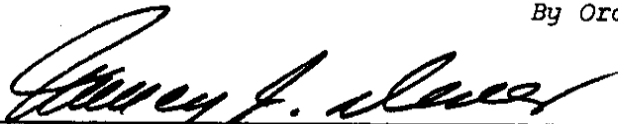
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of November 1984.