

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25365  
Docket Number CL-25060

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committed of the Brotherhood (GL-9754)  
that:

1. Carrier violated the Clerks' Rules Agreement at Bensenville, Illinois when it unjustly treated Employee Vivian Morch on September 3, 1981 by disqualifying her from Position R-11 at Bensenville Yard and failing to allow the thirty (30) days to qualify under such Rules Agreement.

2. Carrier further violated the Clerks' Rules Agreement when it failed and/or refused to render a timely decision of the September 30, 1981 unjust treatment hearing requested by Employee Vivian Morch.

3. Carrier shall now be required to restore Employee Vivian Morch to Position R-11 and compensate her for all lost time caused by her disqualification from Position R-11.

OPINION OF BOARD: Claimant was awarded Relief Clerk Position R-11 at Bensenville Yard on August 6, 1981. She was not qualified at the time of assignment and was accorded thirty (30) days time in which to qualify. This conditional assignment was made pursuant to Rule 8 of the Controlling Agreement which reads, in part, as follows:

"Rule 8 - Time in which to Qualify

(a) When an employe bids for and is assigned to a permanent vacancy or new position he will be allowed thirty (30) working days in which to qualify and will be given full cooperation of department heads and others in his efforts to do so. However, this will not prohibit an employe being removed prior to thirty (30) working days when manifestly incompetent. If an employe fails to qualify he shall retain all seniority rights but cannot displace a regularly assigned employe. He will be considered furloughed as of date of disqualification and if he desires to protect his seniority rights he must comply with the provisions of Rule 12(b)."

After working approximately eleven (11) days in this position, Claimant contracted double pneumonia and was forced to lay off work. She was under a physician's care during her illness. On September 3, 1981, the Assistant Terminal Manager-Administration informed her by letter that she was disqualified from Position R-11. Claimant, by letter, dated September 8, 1981, contested this action and requested an unjust treatment hearing. The hearing was held on September 30, 1981, in accordance with the requirements of Rule 22(f) and based upon the accumulated

trial record, Carrier concluded that she failed to establish a finding of unjust treatment. She was apprised of this determination by letter, dated October 13, 1981. It was Carrier's essential position that she was manifestly incompetent for Position R-11. On September 27, 1981, Claimant was recalled to Position R-1 in the Regional Accounting Office (Revising Clerk - Grade B). However, Claimant was unsatisfied with Carrier's unjust treatment decision and requested an appeals hearing, consistent with Agreement Rule 22(c). Said hearing was held on November 2, 1981, but the time limits for rendering a determination were extended by mutual agreement. On November 24, 1981, the Assistant Vice President - Labor Relations sustained the position that Claimant failed to substantiate unjust treatment. The present claim was filed on December 9, 1981.

In defense of her petition, Claimant argues that she was not provided the thirty (30) working days in which to qualify for the position and strongly avers that no proof was submitted that persuasively demonstrated she was manifestly incompetent. She asserts that Carrier is under a contractual obligation to submit measurable, qualitative proof showing that she was incompetent, which was not done in this instance. She acknowledges not being completely trained in several facets of the keypuncher's position (R-11), but maintains that she would have successfully qualified had she been given the full thirty (30) working days training period. She indicates that the letter written by Ms. Deborah S. Dean who was her trainer for one week and who affirmatively stated that she showed ability and would make a very good keypunch operator, pointedly substantiates her contentions. Further, she contends that since Carrier had not rendered its decision following the September 30, 1981, unjust treatment hearing within ten (10) days, it violated Rule 22(b).

Carrier contends that Claimant plainly failed to establish that she was unjustly treated. It argues that it has the right to disqualify an employee during the qualifying period if the employee cannot acceptably perform the requirements of the position. It asserts that its supervisors were in general agreement that she would not be capable of performing the functions of the position, and avers that her two (2) weeks period of illness confinement did not negate the thirty (30) working days period. Testimony was provided by the Assistant Terminal Manager - Administration and the Terminal Operations Officer that she was not qualified and capable of performing the position's myriad duties. Carrier argues, in effect, that it properly exercised its rights under Rule 8(a) to disqualify her before the end of the prescribed time in which to qualify. It disputes Claimant's averment that Rule 22(c) was violated since it maintains that this provision does not attach a default penalty for an untimely decision.

In reviewing this case, the Board finds no procedural irregularities or violations. While technically it might be argued that Carrier's decision on October 13, 1981, exceeded the ten (10) day time limit set forth in Rule 22(c), Carrier's subsequent acquiescence to Claimant's request to extend the time limits to file a formal claim would moot any arguments of procedural unorthodoxy. The Board finds Claimant's procedural assertions without merit.

Conversely, the Board is not as sanguine as Carrier that Claimant was manifestly incompetent since the record testimony does not establish such level of performance incompetency. To be sure, there are gradations of competency levels in all training, qualifying and performance situations, but the type and caliber of incompetency contemplated by Rule 8(a) presupposes palpable incompetency. Moreover, by definition, the need for a qualifying period indicates an employee need not be totally competent to perform all functions of a position. Inasmuch as Claimant needed to learn several additional functions of the keypuncher's position (R-11), it cannot be persuasively concluded that she was manifestly incompetent. The evidence does not support this finding. She should have been accorded the full thirty (30) working days period in which to qualify.

Accordingly, she should be allowed another attempt to qualify for the keypuncher's position. This means another thirty (30) working days qualifying period in accordance with Rule 8(a). As to compensatory reimbursement, the Board finds that she is entitled to the lost compensation suffered from the time she was furloughed on September 3, 1981, until the time she was recalled to the Revisor Clerk's position on September 27, 1981. This is the only extent of the monetary portion of the claim.

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 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. Oliver - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1985.