

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Grand Trunk Western Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10415) that:

(1) Carrier violated the Working Agreement, particularly Rules 8 and 34, among others, when it disqualified Mr. F. L. Walters from the Rate Analyst position on November 4, 1988, without just and sufficient cause and refused to grant his request for a Hearing to investigate the matter.

(2) Carrier shall now be required to compensate Mr. Walters for the difference in pay between the Rate Analyst position (\$122.78 per day) and the Rate Clerk position (\$111.84 per day), which he now holds, or any other lower rated position that he may have held subsequent to his disqualification, from November 4, 1988 and each subsequent date until such time as he is reinstated to the position of Rate Analyst."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On September 26, 1988, the Claimant acquired a Rate Analyst position in the Marketing Department at the Carrier's headquarters in Detroit, Michigan, by the exercise of seniority. On November 3, 1988, the Claimant was advised he was disqualified from the position.

On November 8, 1988, the Local Chairman requested an Unjust Treatment Hearing under Rule 34 and filed a claim for the difference in wages between the Rate Analyst position and the position to which the Claimant returned. The Carrier denied both requests.

It is the opinion of the Board that the portion of the claim demanding an Unjust Treatment Hearing must be sustained. Rule 34 provides:

"An employee who considers himself unjustly treated, otherwise than covered by these rules shall have the same right of investigation, appeal and representation as provided Rule 26, 27, 28, 31 and 32, if written request which sets forth employee's complaint is made to his immediate superior within sixty (60) days of cause of complaint."

There simply is no justification for not granting the request for a Hearing. The Carrier argued unpersuasively that Rule 8 provided an opportunity for a Hearing, and therefore, Rule 34, in their opinion, didn't apply. The Carrier misconstrues the nature of the Hearing of Rule 8(d). It states:

"When it is definitely determined, through hearing if desired, that the employee cannot qualify, he may be removed before the expiration of thirty (30) working days."

Obviously, there is not an opportunity for the Claimant, but for the Carrier, to hold a Hearing to remove an employee from a position prior to 30 days.

The Claimant is entitled to a Hearing. The claim for time lost cannot be ruled on until the evidence is arrived at that Hearing. The claim for lost time can be refiled upon the conclusion of that Hearing.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.