Form 1
NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31467
Docket No. CL-32106
96-3-94-3-503

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

PARTIES TO DISPUTE:
(Transportation Communications International
(Union
(
(CSX Transportation, Inc. (former Seaboard
(Coast Line Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Union (GL-11092) that:

1. Carrier acted in a harsh and capricious manner when it removed Clerk Janice L. Gover from her position as Pricing Analyst.

2. As a consequence, Carrier shall now restore all rights and make Clerk Gover, and any other Clerks affected, whole for any loss they may have suffered due to Carrier's action."

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 employee 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 May 22, 1992 Claimant was awarded the position of Pricing Analyst at Jacksonville, Florida. Inasmuch as the Claimant had to move from the Baltimore, Maryland, area the employee did not assume the duties of the assignment until August 10, 1992.

On February 22, 1993 a letter was sent to the Claimant by a Carrier Officer criticizing the work of the Claimant and advising there would be a review of the Claimant's work over the next 30 days. After a conference on March 31, 1993 between the Claimant, the Carrier's Manager Contract Administration, and the Organization's District Chairman, the Manager Contract Administration disqualified the Claimant from the Pricing Analyst position. On April 1, 1993 the Carrier abolished the position.

On April 27, 1993 the Claimant wrote the Manager Contract Administration the following letter:

"Your attention is called to Rule 40 of the Seaboard Railroad Company's agreement dated January 1, 1975.

This is to advise that it is my decision to <u>file</u> <u>charges</u> against you in connection with your disqualification of me on my position 096-R-135 Pricing Analyst, effective with the close of business March 31, 1993."

Rule 40 of the Agreement reads as follows:

"RULE 40 -- UNJUST TREATMENT

"An employee who considers himself unjustly treated, otherwise than covered by Rules 37, 38 and 39, shall have the same right of investigation, representation and appeal as provided in those rules, if written request which sets forth the employee's complaint is made to his immediate superior within thirty (30) days of the cause for complaint."

The Carrier never answered the Claimant's letter, nor did it conduct a Hearing.

The Carrier argues that the Claimant did not request an Unjust Treatment Hearing, but instead stated that charges were to be filed against the Manager Contract Administration. While the Claimant's request for a Hearing was inartfully written, the letter's intent, as evidenced by its citation of Rule 40, is obvious and meets the requirement of Rule 40. The Carrier violated the Agreement when it failed to give the Claimant the Hearing.

The remedy sought by the Organization is to make the Claimant and any other Clerks affected whole. There is no evidence any employee suffered a loss of earnings. Therefore, the Board will order the removal of the disqualification from the Claimant's file as the sole remedy in this case.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 1996.