

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32269
Docket No. MS-31961
97-3-94-3-287

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Eloise F. Brewer

PARTIES TO DISPUTE: (

(Northeast Illinois Regional Commuter Railroad
(Corporation

STATEMENT OF CLAIM:

“This is to serve notice, as required by Uniform Rules of Procedure of the National Railroad Adjustment Board effective May 16, 1994 of my intention to file an Ex Parte Submission within 75 days covering an unadjusted dispute between myself, Eloise F. Brewer, and the Northeast Illinois Railroad known as Metra, involving the following:

Metra's File #03-5-670

On December 14, 15, 16, 17, 18, 21, 22, 23, 28, 29, and 30th, 1992. I was forced off my own position of General Clerk while in the 30 day training and qualifying time, to learn and work another position. As a remedy, I am claiming 11 days pay per violations of Rules 8a, 8b, 10b, 12, 16, and 41. I was denied a hearing per Rule #57 Unjust Treatment.

Metra's File #03-6-701

On March 10, 1993, I was forced to work another position and was not allowed to work my own position. The Lead Clerk exchanged positions with me. I was denied a hearing per Rule #57 Unjust Treatment to address Rule #3. I am seeking as remedy a hearing to address the above and 1 days pay. The following Rules #3, 10b, 12, 16, and 41 were violated.

Metra's File #03-6-707

On April 23, 1993, I was forced of my position to work another position. Rules #3, 10b, 12, 16, and 41 were violated. I am claiming 1 days pay as remedy."

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 were given due notice of hearing thereon.

The Claimant in these three disputes was assigned to a General Clerk position the duties of which stipulated that the incumbent

"Must be familiar with General Accounting and clerical work in an accounting department and be proficient on business machines (calculator). Will be responsible for keying and balancing Bank Deposit Tickets, all mail-out duties, filing, reconciling General Ledger Accounts, key and distribute bad check list and other duties as assigned."

In each of the instances covered by this grievance, the General Clerk (Claimant) was utilized to perform only clerical work within the General Accounting Department for which she was compensated at the rate of the position on which she performed service.

From a review of the on-property claims and after studying the respective positions of the parties before the Board, it is abundantly clear that the claims as initially presented to the Carrier and as handled through the grievance procedures on the property have been substantially expanded in the Claimant's presentation to this Board. For example, the first claim as listed in the STATEMENT OF CLAIM, supra,

contains six additional claim dates which were not part of the claim as handled on the property. In addition, the claims as listed with this Board contain agreement rule references and assertions which were not part of the on-property handling of these disputes, including references and assertions relative to an "unjust treatment hearing."

It is the Board's conclusion that the Unjust Treatment Hearing issue, even if it had been timely raised on the property, would be denied for the same reasons as were stated in Award 23 of Public Law Board No. 5439 which involved the same parties as are present here and which held:

"RULE 57 - UNJUST TREATMENT

'A. An employe who considers himself unjustly treated in matters other than discipline or other than as covered by these Rules, will have the same right of hearing and appeal as provided in Rule 56 if written request is made to his immediate superior officer within ten (10) calendar days of the cause for the complaint.'

In Award 22 of this Board, and because of the language 'other than as covered by these Rules' in Rule 57, we determined that Rule 57 does not entitle an employee to a hearing for alleged unjust treatment where the alleged unjust treatment is covered by other rules of the Agreement. Rather, those kinds of complaints must be handled through ordinary claims processing procedures.

Claimant's letters show that the substance of her complaints are covered by specific rules in the Agreement. Indeed, in her letters, Claimant identifies specific rules she maintains were violated (i.e., Rules 8(A), (B), 41 and 3) which, upon examination, reflect 'causes of action' for which Claimant could have pursued claims. Claimant is therefore not entitled to an unjust treatment hearing under Rule 57."

The Board further concludes that none of the other contentions of the Claimant in regard to her use as a General Clerk to perform other or additional clerical work has any penalty claim basis either in fact or is in any way prohibited by any of the Agreement Rules cited. In short, the Claimant, as the moving party in this dispute, has

not met the burden of proof to support the assertion that a rule violation has occurred. Therefore, the claims as listed are denied in their entirety.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 7th day of October 1997.