

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33940
Docket No. CL-34099
00-3-97-3-643**

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

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(The Burlington Northern and Santa Fe Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11831) that:

Carrier acted in an arbitrary, capricious and unjust manner when, on August 5, 1993, it denied Mr. V. M. Chatman’s bid application for Transition Team Specialist position at Ft. Worth, Texas. As a result, Carrier shall now be required to:

- 1. Place Mr. Chatman (Claimant) on a Transition Team Specialist position without further delay, pursuant to Memorandum of Agreement No. 55, and**
- 2. Reimburse Claimant for any loss in compensation incurred during his disqualification.”**

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 facts and circumstances in this case are that on June 30, 1993, the Carrier bulletined 35 positions of Transition Team Specialists, as a result of Memorandum of Agreement No. 55. The Claimant, with a seniority date of February 23, 1966, submitted his application for one of those positions, in preference order, on July 13, 1993. Subsequently, the Claimant was interviewed by Ms. R. D. McCullum, Manager Customer Service. Under date of August 5, 1993, Claimant was notified by R. W. Lease, Team Leader, Customer Support, Ft. Worth, Texas, that his application was denied, "[A]ccount you lack sufficient fitness and ability to perform the duties of the Transition Team Specialist Positions."

On August 13, 1993, the Claimant submitted his request for a Rule 58 Unjust Treatment Hearing that was subsequently held on September 14, 1993, at the Cicero Terminal Office Building. During the Hearing, the Claimant's attendance record covering the years 1987 through August 15, 1993 was introduced. That documentation showed that the Claimant had been absent from work with pay due to illness on 113 days during that six year period. By letter of October 4, 1993, the Carrier reiterated its initial disqualification of the Claimant, citing his attendance problems, and denied the claim of unjust treatment.

Thereafter, by Letter of December 2, 1993, the Local Chairman filed a claim on behalf of Claimant Chatman, alleging the Unjust Treatment Hearing was biased because the Hearing Officer acted as "judge and jury" and that "carrier's position in this claim is unacceptable, rejected and herein appealed." It is significant that the claim, as initially filed, sought that the Claimant "be reconsidered for this position on his merit and past working history only", i.e., there was no request for any compensation in the claim. In that connection, we also note that the March 24, 1994 appeal of the initial denial of that claim stated: "Please advise when the claim will be honored as originally presented." (Emphasis added).

It was not until the dispute was filed with the Board on August 5, 1997, that the Organization substantially amended the claim to include a demand that the Carrier "[R]eimburse Claimant for any loss in compensation incurred during his disqualification." The Board has held consistently that the claim submitted to the Board must not be at material variance with the claim handled and denied on the property. Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad

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Adjustment Board require that we dismiss this claim without further comment. See Awards 19031, 16607, 16525, 15384, 14258, 13235, 12124, 11904, 10193 and 10873.

AWARD

Claim dismissed.

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 22nd day of February, 2000.