



Award No. 18922
Docket No. CL-19141

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6911) that:

(1) Carrier violated the Clerks' Rules Agreement at Austin, Minnesota, when on December 22, 1969 the Carrier failed to afford employe E. Jorgensen the right of investigation after being unjustly treated.

(2) Carrier shall now be required to honor employe Jorgensen's written request for the right of investigation, holding same in line with the provisions of the Rules Agreement.

OPINION OF BOARD: The Organization's Local Chairman, Richard C. Jahr, by letter dated December 17, 1969, advised Carrier that Claimant requests a hearing in accordance with Rule 22(g) of the Agreement because Claimant was arbitrarily required to perform duties of his assigned position in addition to performing duties of position 88600 cashier from December 1, 1969 through December 5, 1969, and because he also was required to work position 88640 in addition to his regular duties starting December 8, 1969 continuing to the date of said letter.

Carrier's Regional Data Manager, J. J. Komurka, by letter dated December 22, 1969 to Local Chairman Jahr advised that disallowed time claims are not covered by Rule 22.

Rule 22(g) of the Agreement provides as follows:

"(g) An employe, irrespective of period employed, who considers himself unjustly treated, other than covered by these rules, shall have the same right of investigation, hearing and appeal, in accordance with preceding sections of this rule, provided written request, which sets forth employe's complaint, is made to the immediate superior officer within thirty (30) days from cause of complaint."

The Organization's position is that Claimant was unjustly treated other than covered by the Rules Agreement, and regardless of whether he could prove it or not, he had the right to ask for and receive an investigation under the provisions of Rule 22(g) for being mistreated.

Carrier's position is that inasmuch as Claimant requested a hearing under Rule 22 for work assignments that are provided for in other rules of the agreement and inasmuch as these specific assignments were made the subject of claims submitted by Claimant, the complaint is covered by other rules of the agreement and is the subject of specific claims under rules of the agreement, and therefore there was no right to a hearing under said Rule 22(g); that the claims of and/or in behalf of Claimant as well as the request in his behalf for an unjust treatment hearing, are based upon the same allegations, namely being required to perform the duties of his regular position as well as those of another position, and pursuant to Rule 17 Carrier has the right to temporarily assign an employe to a higher or lower rated position for any part of an assigned work day provided it does pay the rate stipulated; that thus we are herewith concerned with the interpretation and/or application of a schedule rule and not with unjust treatment "other than covered by these rules" as alleged by Claimant.

Carrier strongly argues that Claimant's alleged complaint was covered by specific rules of the agreement and thus it was not a complaint "other than covered by these rules", and the unjust treatment rule was therefore not applicable. This contention was rejected by this Board in Award No. 9854, involving the same Carrier as in this dispute, when the Board clearly stated:

"The phrase 'other than covered by these rules' causes us some confusion because of its ambiguity. Carrier contends that, since Claimant Carpenter's disqualification for the position in question was handled in accordance with the provisions of Rule 8(a), this precludes any further consideration under Rule 22(g). Referee Lynch accepted this Rule 8(a) as the 'specific' rule and held that it should be applied in preference to the more 'general' Rule 22(g), (Award 8422). But we agree with Referee Bernstein in that the two rules are not in conflict, but actually compliment each other (Award 9415). The Carrier may disqualify an employe under Rule 8(a), but if that disqualification was carried out in such a manner as to leave the employe with the feeling that he had been treated unfairly, regardless of whether he can prove unfairness, he has a right to ask for an investigation. Rule 22(g) affords some protection to all employes who think they have been mistreated."

Finding said Award No. 9854 controlling in the determination of this dispute, we must sustain 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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1972.