

**Award No. 867**

**Docket No. 746**

**2-Erie-FO-'42**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee H. B. Rudolph when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)**

**ERIE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That the carrier at Hornell, N. Y., removed from service Laborer Walter Montgomery in violation of current agreement, effective October 1, 1934, and that accordingly he be restored to service and reimbursed for all time lost.

**EMPLOYEES' STATEMENT OF FACTS:** Laborer Walter Montgomery entered the service of the carrier at Hornell, New York on August 16, 1941, and remained therein until October 30, 1941, when he was removed from service with the explanation that his employment application was not approved.

**POSITION OF EMPLOYEES:** The employees certify that no notice has been received from the carrier to revise the seniority provisions of the agreement as provided for in Rule 18, reading—

This agreement shall become effective October 1, 1934 and shall continue in effect until May 1, 1935 and thereafter until revised or changed, of which intention thirty (30) days' notice shall be given by the party desiring the change.

The carrier's position relative to the right to approve or reject the employment application of an employe within a period of ninety days, creates a new and an arbitrary rule, for there is no such implied language or right contained in any rule between the covers of our current agreement.

It is the employees' position that Walter Montgomery, upon entering the service of the carrier on August 16, 1941, established employment relations, rights, protection and benefits of all provisions of the current agreement, and all of which is confirmed by Rule 11 (b), reading:

Seniority rights under these rules begin at the time an employe's pay starts in an occupation coming within the scope of this agreement, based on the employe's last entry into service of the company.

The employes further contend that Walter Montgomery was discharged on October 30, 1941, by the carrier without a proper investigation to determine whether or not dismissal action would be justifiable, and in violation of Rule 17 (a), reading—

There are many rules and regulations of the railroad for each class of railroad service that are not covered by negotiated rules with employes, such as Rules of the Operating Department, Safety Rules, Time Table Rules, Employment Rules and others. This principle has been recognized by the Second Division and the following is quoted from opinion of the Second Division in Award 261, assisted by Referee John A. Lapp:

“\* \* \* That the carrier would have the right to lay down rules governing drinking or intoxication, while in service or on company property or in such place or manner as would have a direct effect on the carrier's business, there can be no doubt. \* \* \*”

In Award 689, the Second Division, assisted by Referee I. L. Sharfman denied a claim of employes which was progressed by the employes on the basis that an employe had been dismissed for violation of “self promulgated Rule 27,” a rule not contained in the current agreement.

In the progress of this claim, the employes have not attempted to state or infer that there was any discrimination in the removal of Walter Montgomery from the service, nor have they made any statement that would question the judgment of the railroad in not approving his application. Their entire contention has been that the railroad violated Rule 17, and they are proceeding on the basis that negotiated rules effective October 1, 1934, are controlling in employment matters and that anyone who works one day establishes an employment status and seniority regardless of employment regulations of long practice.

This is confirmed in a recent letter of the general chairman in which he says in part:

“\* \* \* When a man starts work in our craft, they work under the rules of 1934 and all statements signed by him become null and void.”

To anyone familiar with railroad employment proceedings, this would be impracticable. The railroad has always maintained the right to set up employment standards and this right was not surrendered by the rules of 1934. Form 2187, application for employment, has been in use for more than thirty years.

This claim should be denied for the following reasons:

1. Walter J. Montgomery was fully aware of and had accepted the provisions of employment for temporary service, pending approval of application (see Exhibit A).
2. Rule 17 is applicable to employes within scope of rules effective October 1, 1934, when the railroad has accepted them as employes as provided for in the written requirements as shown on Form 2187, application for employment.
3. When applications for employment are approved, employes are given seniority from “time employe's pay starts,” as provided for in Rule 11.
4. There was no discrimination in the removal from temporary service of Walter J. Montgomery. Investigation conducted by the railroad following his application for employment developed that he did not meet the requirements and, accordingly, his application was not approved by the employment department.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute waived right of appearance at hearing thereon.

This dispute is identical to that in Docket 739, and is governed by the findings in that docket as set forth in Award 866.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1942.