

Award No. 1560
Docket No. 1463
2-C&NW-MA-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

CHICAGO & NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, Machinist William Grohovsky's service rights were unjustly terminated on August 13, 1950.

2. That accordingly the Carrier be ordered to restore the aforesaid Machinist to service with service rights unimpaired and paid for all time lost retroactive to the aforementioned date.

EMPLOYEES' STATEMENT OF FACTS: The carrier employed Wm. Grohovsky, hereinafter referred to as the claimant, as a fully qualified machinist, at Chicago shops, Chicago, Illinois, on July 27, 1950.

The claimant entered service on the 7:30 A.M. to 12:00 Noon - 12:30 P.M. to 4:30 P.M. shift on July 27, 1950 and remained therein continuously until the end of the shift on August 11, 1950.

Prior to the close of the shift on August 11, 1950, he was advised by his foreman that he was not qualified to perform the work required.

Notwithstanding advice furnished the claimant on August 11, 1950, he reported for work Monday morning, August 14, 1950 and his foreman refused to permit him to go to work, advising him to report to the general foreman. On reporting to the general foreman, he was given a time slip for wages due.

The local committee met the general foreman on August 14, 1950, filing complaint that the claimant was being deprived of employment without first being given an opportunity to refute the charges thru an investigation, as provided for in Rule 35 of the controlling agreement, but were unable to secure the consent of the general foreman to grant an investigation.

The local machinist's committee then requested a meeting with the superintendent of shops, which was granted, for August 17, 1950, at which time they asked for an investigation to be held in line with the intent of Rule 35 of the controlling agreement and same was denied.

It is the position of the carrier that this claim is not properly supported by the provisions of Rule 35, federated shop crafts' schedule, and must accordingly be denied.

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 were given due notice of hearing thereon.

William Grohovsky entered the carrier's service as a machinist on July 27, 1950. He had previously been in carrier's service in that capacity but had resigned effective May 15, 1946. When he again entered its service on July 27, 1950 he did so on the same basis as any new employe.

Carrier discharged Grohovsky on August 11, 1950, without a hearing, for the reason that he had failed to show he was competent to do the work of a machinist. The machinists contend Rule 35 of the parties' controlling agreement prohibits carrier from discharging any employe without a hearing and showing of cause for doing so, whereas carrier contends Rule 34 of their controlling agreement puts every new employe on a 30-day probation during which carrier can unilaterally pass on his competency. In other words, that after a new employe is kept in service for 30 days his competency is presumed and thereafter, in order to discharge him for incompetency, carrier would have to comply with the requirements of Rule 35.

Standing alone the language of Rule 35 would have the meaning contended for by the machinists but we must read Rule 35 in relation to Rule 34 or we would eliminate the latter from the parties' agreement, a right which we do not have.

While not too clearly stated by the language used, it is apparent that Rule 34 is intended to establish a probationary period of 30 days during which carrier can determine the competency of any new employe and discharge him, if it determines he is not competent, without having a hearing as provided for by Rule 35. That such was its intended meaning, and so understood by the parties at the time, is fully evidenced by the manner in which it has been applied by the parties on the property up until this dispute.

We find the past application of these rules on the property by the parties to be the correct construction thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July, 1952.