

Award No. 6275

Docket No. 6087

2-RDG-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Reading Company was in error when dismissing Coach Cleaner Samuel King on Saturday, September 13, 1969, without the benefit of his having been given a hearing to determine the reason for doing so.

2. (a) That accordingly, the Reading Company be ordered to make Claimant whole by compensating him for all time lost from September 13, 1969.

(b) Make him whole for all vacation rights he may have had.

(c) Pay the premiums for Hospital, Surgical and Medical Benefits for all time held out of service.

(d) Pay the premiums for Group Life Insurance for all time held out of service.

EMPLOYEES' STATEMENT OF FACTS: Coach Cleaner Samuel King, hereinafter referred to as the claimant, entered the service of the Reading Company, hereinafter referred to as the Carrier, Wednesday, July 16, 1969.

Saturday, September 13, 1969, Carrier removed claimant from its service without the benefit of a hearing to develop the reasons for doing so.

Under date of October 4, 1969, Local Chairman entered claim in protest of this violation of the provisions of the agreement.

This dispute was subsequently handled with all the officers of the Carrier, designated to handle such disputes, including the highest designated officer of the Carrier, all of whom have failed to make satisfactory adjustment.

The agreement effective January 16, 1940, as subsequently amended is controlling.

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 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."

The title of Rule 35, "QUALIFYING" is indicative of the parties' intent. This title was specifically added to the rule when the parties revised the original 1940 agreement in 1951. Hence, Carrier submits that by practice and logical interpretation the claimant's new employment status of less than sixty days justified his dismissal without a hearing.

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.

Parties to said dispute waived right of appearance at hearing thereon.

On July 16, 1969, the claimant was hired by the Carrier as a coach cleaner at the Reading Terminal, Philadelphia, Pennsylvania. On September 6, 1969, a patrolman employed by the Carrier in observance of claimant's behavior, escorted him to the office of the Carrier's medical examiner, where, after a thorough examination, he was declared to be under the influence of intoxicating beverages. On September 8th, he was duly notified of his dismissal from service effective September 7, 1969.

The organization contends that Carrier violated the collective bargaining agreement, to wit, Rule 34 therein, which is the standard discipline rule affording an employe a fair and impartial trial before dismissal.

The Carrier denies that Rule 34 has any applicability to this case and contends that its action is in consonance with special Rule 35 captioned Qualifying, which reads as follows:

"Qualifying

Any employe who has been in the service of the railroad sixty (60) days shall not be dismissed for incompetency."

They contend that the principal purpose of this rule was to provide a sixty (60) day probationary period for new employes, that it has been the accepted application of Rules 34 and 35 that where an employe is disqualified under Rule 35, the provisions of Rule 34 do not apply, and further that the organization's contention that the claimant was entitled to a hearing is contrary to 31 years of practice on the property. They also rely on the original employment application which stated:

"I further understand and agree that my employment is temporary, pending the approval or rejection of this application, and that this application may be rejected by the Company for any cause which it may deem proper."

The title of Rule 35 "Qualifying" together with its contents and the original employment application, clearly demonstrate that claimant's status was that of a temporary employe. If he had been in the employ of the Carrier sixty days or more, his status would have been that of a permanent employe, thus affording him all the benefits, rights, etc., contained in the collective bargaining Agreement.

In accordance with the facts of the case, claimant was clearly incompetent and dismissed in accordance with the specific provisions of Rule 35. We find no violation. We will deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1972.