

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., when award was rendered.

Parties to Dispute: (Marc A. Gilliard, Petitioner
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(National Railroad Passenger Corporation

Dispute: Claim of Employee:

It is my contention that I was unjustly dismissed from the National Railroad Passenger Corporation in October, 1978. I am filing for all wages and benefits lost since October, 1978.

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 were given due notice of hearing thereon.

Carrier argues that the individual Claimant in this matter failed to follow the proper procedure for claim handling under Rule 24(a) and Section 3, First (i) of the Railway Labor Act and Circular No. 1, and the claim should thus be barred from consideration by the Board. While recognizing a degree of validity of the Carrier's procedural argument, the Board nevertheless finds it appropriate in this instance to dispose of the matter on its merits.

According to his undisputed contention, Claimant was employed as a Carman by Conrail (Penn Central) from February 5, 1975 to June 16, 1977, at which time he was laid off.

On October 2, 1978, he was employed by the Carrier (National Railroad Passenger Corporation). There was no showing that his previous service with Conrail gave him any pre-existing seniority rights with the Carrier upon his employment on October 2, 1978.

The Carrier terminated the Claimant's employment effective October 29, 1978. In doing so, the Carrier exercised its rights under Rule 3(a) which reads as follows:

"Applications for newly-hired employees shall be approved or disapproved within 60 calendar days after applicants begin work. If applications are not disapproved within the 60 day period, the applications will be considered as having

been approved. Applicants shall within 60 days from date of employment, if requested, have returned to them all documents which have been furnished to the Company."

The letter of termination alleged that the Claimant "falsified" his application (apparently as to length of previously acquired Carman experience). However, Rule 3(a) gives the Carrier the right to disapprove an application for a newly hired employe, without giving a specific reason for doing so.

Thus, the termination after 27 days of employment is within the discretion of the Carrier and in this case is based on its learning that the applicant had less actual experience than he stated. The Board has no basis to set aside the Carrier's actions.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of January, 1982.