

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

(Donald L. Kingery
PARTIES TO DISPUTE: (
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

On May 1, 1989 Norfolk Southern's officer, General Foreman R.C. Jacobs, notified me that I was released from service because of supposed unsatisfactory performance. He said he based his decision on "reports" that he received from his foremen G.K. Quin and E.R. Johnson. When I asked for a conference to clarify discrepancies of the reports, he denied the request. I disagreed with the foremen's reports as the allegations were untrue. I then filed grievance as directed by the USNLRB at Chicago. The claim was for full reinstatement of employment as carman of the Norfolk Southern at Melvindale Mi., with all wages and benefits from 5-1-89 to date of reinstatement to be recovered by me from the Norfolk Southern Corporation. On 11-2-89, I sent a letter to Mr. Jacobs stating that since he did not reply to my grievance he was in violation of the time limits set forth in the collective bargaining agreement between the Norfolk Southern and the Carmen, and therefore should award the grievance as presented. On 11-9-89 (136 days after the grievance was presented) I received a letter from Mr. Jacobs stating that I was released pursuant (sic) to rule 34, with no mention of his not sending letter of reply to grievance in the time limit allowed. I sent a letter back stating that his letter had no relevance since he did not comply with the time limit of the Agreement. I then sent a letter to T.R. Malloy, the highest designated officer for handling grievances, on 3-12-90 stating that the grievance should be awarded as presented. I did not received a reply for more than four months and sent a letter asking for a reply to this grievance. On Aug. 13, 1990 I received a letter from Mr. Malloy contending that he sent a reply on April 23, 1990 supporting Mr. Jacobs decision, again not mentioning the time limit factor as Mr. Jacobs didn't. I therefore am appealing to the NATIONAL RAILWAY ADJUSTMENT BOARD on the merit of the grievance as presented and on the violation of the Norfolk Southern Corporation by not replying in a timely fashion to the grievance.

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 employes 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.

Petitioner, a former employee of the Grand Trunk Western Railroad, was hired, on April 3, 1989, by Carrier as a Student Carmen at Detroit, Michigan. Student Carmen usually are placed in a four phase program, Orientation, Academic Training, Laboratory Training and On-the-job Training. Because of his prior railroad experience the first three phases of the program were waived and he was placed in phase IV, On-the-job Training. Within 30 days of the date of hire, he was notified that was disqualified.

Before this Board, Petitioner challenges his release on both substantive and procedural grounds.

There is no question that in this industry a carrier may release candidates for permanent employment during their probationary period without hearing and investigation and without detailing the basis on which the decision is predicated. Under Rule 34 of the Agreement covering Petitioner's service, entitlement to an investigation would not obtain until after thirty days. Under the Student Carman Agreement which was applicable to his training, Petitioner was on probation for "60 creditable days." Petitioner's separation from service occurred within the applicable time frames of both provisions.

Petitioner has advanced several procedural arguments contending that his challenge to his release was not timely handled by Carrier, initially and later on appeal. The facts on this point are disputed, but, nonetheless, we do not find these arguments persuasive. For the Time Limits on Claims and Grievances Rule to be applicable here, Petitioner must be either an employee involved in a "claim or grievance" or an "employee held out of service in [a] discipline case." At the time he was neither, he was not an employee of the Carrier. What Petitioner's status was, when he challenged his release, was that of a candidate for employment released during his probationary period. As such the Time Limit Rule would not apply to his situation so long as the release occurred within the first 30 days of service.

Petitioner's claim is without merit, it will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October 1991.