

Award No. 866

Docket No. 739

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.

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 removed from service Laborers Whalen, Vandermark, Laconi and Miigliionico in violation of Rule 17 (a) and that accordingly they be reimbursed for all time lost.

EMPLOYEES' STATEMENT OF FACTS: The above claimants entered the service of the carrier at Port Jervis, New York, as of the dates appearing after their names—

Mr. Whalen, July 18, 1941
Mr. Vandermark, July 29, 1941
Mr. Laconi, September 13, 1941
Mr. Miigliionico, September 13, 1941

The carrier removed from service Mr. Vandermark on August 18, Mr. Whalen on September 6, Mr. Miigliionico on September 27, Mr. Decker on October 1, and Mr. Laconi on October 4, 1941, with the explanation that their applications for employment were not approved.

POSITION OF EMPLOYEES: That Rule 17 (a) reads as follows:

An employe coming under the scope of this agreement will not be disciplined by record, suspension (except by pending investigation) nor discharged without sufficient or just cause, until the proper investigation has been made; such investigation will be made at the earliest possible time.

was violated inasmuch as the men were not given an investigation in accordance with the rule, to determine if the Erie Railroad Company had just cause according to the rules to dismiss these men from service.

That there is no rule in our agreement giving the company ninety days to approve a man's employment application as our Rule 11 (b) reads as follows:

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.

Therefore the following exhibits are submitted as evidence that all has been done in accordance with the terms of the agreement and to further

3. When applications for employment are approved, employes are given seniority from "time the employe's pay starts," as provided for in Rule 11.

4. There was no discrimination in the removal from temporary service of the five persons involved in this claim. The investigation conducted by the railroad following these applications for employment developed that these individuals did not meet the requirements and accordingly their applications were 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.

Rule 17 (a) relates to discipline, suspension or discharge for some act of the employe after entering the service of the carrier. This rule does not extend or purport to extend to an investigation of the qualifications of an applicant for employment. In the absence of any time requirement for the disapproval of an application for employment the rules should be construed as contemplating such action will be taken in a reasonable time. See First Division Awards 3099 and 6699. Under the facts of record it must be held that the applications were disapproved within a reasonable time.

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.