

Award No. 869

Docket No. 757

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 EMPLOYES'
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the carrier at Salamanca, New York, removed from service Laborer Carl Muzi in violation of current agreement, effective October 1, 1934, and that accordingly he be restored to service and reimbursed for all time lost.

EMPLOYES' STATEMENT OF FACTS: Laborer Carl Muzi entered the service of the carrier at Salamanca, New York on November 6, 1941, and remained therein until January 11, 1942, when he was removed from service with the explanation that his employment application was not approved.

POSITION OF EMPLOYES: The employees certify that no notice has been received from the carrier to revise the seniority provisions of the agreement as provided for in Rule 18, reading—

This agreement shall become effective October 1st, 1934 and shall continue in effect until May 1st, 1935 and thereafter until revised or changed, of which intention thirty (30) days notice shall be given by the party desiring the change.

The carrier's position relative to the right to approve or reject the employment application of an employee within a period of ninety days, creates a new and an arbitrary rule, for there is no such implied language or right contained in any rule between the covers of our current agreement.

It is the employees' position that Carl Muzi, upon entering the service of the carrier on November 6, 1941, established employment relations, rights, protection and benefits of all provisions of the current agreement, and all of which is confirmed by Rule 11-(b) reading:

Seniority rights under these rules begin at the time an employee's pay starts in an occupation coming within the scope of this agreement, based on the employee's last entry into service of the company.

The employees further contend that Carl Muzi was discharged on January 11, 1942, by the carrier without a proper investigation to determine whether or not dismissal action would be justifiable, and in violation of Rule 17 (a), reading—

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.

It is finally contended that the disapproval of the claimant's application, would not constitute "sufficient or just cause" for dismissal, within the meaning of provisions of the current agreement.

CARRIER'S STATEMENT OF FACTS: Carmine Carl Muzi was an applicant for employment as laborer, Salamanca, New York. He was informed and understood that he was being permitted to start work pending approval of his employment application, and his attention was called to the paragraph on page three (3) of the application, reading as follows:

"3. That, if accepted, my employment by the company pursuant to this application shall be temporary and may be terminated at any time during the first ninety (90) days of my employment if my application is not approved by proper authority."

Application was disapproved by the employment department and Muzi was so informed by the supervising officer at Salamanca, New York.

POSITION OF CARRIER: This claim of C. C. Muzi is similar to the claims of Laborers Whalen, Vandermark, Laconi, Decker and Miiglionico, Docket 739-Erie-FO; and Laborer Walter J. Montgomery, Docket 746-Erie-FO, which dockets are now pending with the Second Division; also claim of George Meagley, statement submitted April 28, 1942.

Applicants for employment who are permitted to work are not considered as employes until their applications are approved by the employment department, and this is called to the attention of all applicants when they complete Application Form 2187. When employment is approved, their seniority dates from day "pay starts."

This claim should be denied for the following reasons:

1. Carmine Carl Muzi was fully aware of and had accepted the provisions of employment temporarily, pending disposition of his application.
2. Rule 17 is applicable to employes within scope of rules effective October 1, 1934, when the railroad has accepted them as employes as provided for in the written requirements as shown in the application for employment.
3. If application for employment is approved, then the employee's seniority begins when "pay starts" as provided for in Rule 11.
4. There was no discrimination in the removal from temporary service of C. C. Muzi. Investigation conducted by the railroad, following his application for employment developed that he did not meet the requirements, and accordingly his application was 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.

This dispute is identical to that in Docket 739, and is governed by the findings in that docket as set forth in Award 866.

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.