

Award No. 956

Docket No. 877

2-KCT-MA-'43

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 38, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

KANSAS CITY TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That by their act of discharging Machinist L. L. Gwinn date of November 20, 1942, Kansas City, Missouri, without first affording him proper investigation management violated provisions of Rule 28 of controlling agreement.

(b) That Machinist L. L. Gwinn be immediately reinstated and compensated for all time held out of service November 21 to time of restoration inclusive, and personal record cleared of all records of case.

EMPLOYEES' STATEMENT OF FACTS: Machinist L. L. Gwinn was employed by Kansas City Terminal Railroad Company date of October 21, 1942; he was arbitrarily discharged November 29, 1942.

POSITION OF EMPLOYEES: That under provisions of Rule 20 of controlling agreement, reading:

Seniority shall begin the date employe's pay starts in the department, and in the craft, and class to which assigned. When two (2) or more employes enter upon their duties on the same date, employing officer shall at that time designate respective seniority rank of such employes,

employe's seniority dates from date pay starts in the craft and department in which employed.

Rule 28 of controlling agreement:

The right of the Company to suspend or discharge an employe for any just and sufficient reason is recognized, as is also the right of an employe to a fair and impartial hearing as to the cause and justification for suspension or dismissal. Such hearing will be held promptly, provided it is requested within five days from date of suspension or discharge. At a reasonable time prior to the investigation the employe or his representative shall be advised of the precise charge against him and given reasonable opportunity to secure the necessary witnesses.

justification for suspension or dismissal. Such hearing will be held promptly, provided it is requested within five (5) days from date of suspension or discharge. At a reasonable time prior to the investigation the employe or his representative shall be advised of the precise charge against him and given reasonable opportunity to secure the necessary witnesses. If it is found that the employe has been unjustly dealt with, such employe shall be reinstated, with seniority rights unimpaired, and compensated for the wage loss, if any, suffered by him."

Further in support of its position, the carrier respectfully directs attention to Second Division Award No. 866, wherein Referee H. B. Rudolph, in the findings, gives the following ruling:

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. (Under-scoring supplied.)

Rule 17 (a), of the agreement mentioned in Award No. 866, is substantially the same as Rule 28 of the agreement between the Kansas City Terminal Railway Company and System Federation No. 38, Railway Employees' Department, A. F. of L. The application of one of the claimants in Award 866 was disapproved forty-nine days subsequent to his beginning employment and in Awards 3099 and 6699 of the First Division referred to in the findings in Award 866 two different referees held that one hundred days was a reasonable time in which to disapprove an application. In the instant case, L. L. Gwinn's application was disapproved in thirty-one days. Therefore, the carrier respectfully requests that the claim be denied, and relies on the controlling decisions in Awards 866, 3099 and 6699 as being ample support for such denial.

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 were given due notice of hearing thereon.

Rule 28 of the agreement, dealing with investigations incident to disciplinary action on the part of the carrier, is not applicable to the circumstances disclosed by the evidence of record in this proceeding.

The sole issue involved here concerns the right of the carrier to disapprove the claimant's application for employment on November 20, 1942.

Rule 40 of the agreement specifies that all applicants for employment will fill out in detail the carrier's Standard Application Form No. 3. This application form provides, among other things, that the applicant may be allowed to enter service on probation, and that he will not be retained if his work does not prove satisfactory.

The claimant's application, filed October 20, 1942, was disapproved on November 20, 1942, after he had worked for thirty-one days. In these circumstances the conclusion is justified that the action of the carrier was taken within a reasonable time and did not involve any violation of the agreement.

See Award No. 866.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of October, 1943.