

Award No. 1463
Docket No. 1403
2-M&StL-SM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 15, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the current agreement and the Memorandum of Agreement covering the promotion of apprentices and helpers to mechanics' positions, effective July 1, 1941, Sheet Metal Worker Frank Palechek's service rights were unjustly terminated on November 4, 1949.

2—That accordingly the carrier be ordered to compensate the aforementioned Sheet Metal Worker for all time lost from November 4, 1949 to April 18, 1950, the date he was restored to service as a sheet metal worker by the Chicago, St. Paul, Minneapolis & Omaha Railway Company.

EMPLOYEES' STATEMENT OF FACTS: Frank Palechek, sheet metal worker, was employed by the Chicago, Saint Paul, Minneapolis & Omaha Railway Company with a seniority date of January 1, 1918, and worked for that railroad until he was laid off in reduction of force July 29, 1949. Following the reduction of force, he was restored to the service of the Omaha Railway in accordance with his seniority at its St. Paul shops, April 18, 1950, and is continuing to work in the capacity of sheet metal worker at the present time.

While Mr. Palechek was laid off from the service of the Chicago, Saint Paul, Minneapolis & Omaha Railway, he sought and secured employment on October 10, 1949, as a sheet metal worker on the Minneapolis & St. Louis Railway at its Minneapolis shops and he was discharged by The Minneapolis & St. Louis Railway on November 4, 1949. He was discharged by the Minneapolis & St. Louis Railway because of their statement that he was over the age limits of that railroad for employing an experienced railroad mechanic.

Immediately following the unjust removal from service of Frank Palechek, the Minneapolis & St. Louis Railway advanced Sheet Metal Worker Helper Leo Ramin to the position of sheet metal worker.

The fact that the company advanced a sheet metal worker helper to the position of sheet metal worker is evidence that there was a position for sheet metal worker mechanic that had to be filled, and that the Minneapolis & St. Louis Railway should have retained Frank Palechek for that position.

That rule has always been interpreted by both carrier and employes as providing a so-called 30-day trial period in which to approve or disapprove an employe's application. Indeed it has no other application or meaning.

Regardless of that rule, it is a generally recognized principle that a carrier has the right to set up certain qualifications for new employes; one of the most important of which is a maximum age limit.

Without waiving its position that the instant claim is entirely devoid of merit, carrier calls attention to the fact that promoted helper Ramin was used as a mechanic only from December 6, 1949 to March 20, 1950. During the balance of the time between November 4, 1949 and April 18, 1950, the dates involved in the instant claim, Sheet Metal Worker Miller's vacancy was filled by a qualified mechanic, or left vacant.

Had Palechek been a qualified employe and continued in service, he would nevertheless have been laid off March 20, 1950, on which date all of carrier's regularly assigned forces were in service as hereinbefore shown.

Carrier believes the instant claim to be without merit for the following reasons:

1. Palechek did not qualify for employment under the qualification rules of the carrier, and his application for employment was therefore not approved.
2. He was permitted to enter the service on a day-to-day basis only, after an understanding to that effect had been reached with him.
3. Rule 36 of the current agreement establishes a 30-day period in which an employe's application may be disapproved.
4. Palechek's application for employment was disapproved after he had been in the carrier's service for only 24 days.
5. There is no rule or agreement in effect with the shop crafts which requires the carrier to employ mechanics regardless of their age, and heretofore there has never been any dispute or question as to that.

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.

Claimant for many years was an employe of Chicago, St. Paul, Minneapolis & Omaha Railway Company with a seniority date of January 1, 1918. On July 29, 1949, he was laid off because of a reduction of force. On October 10, 1949, he made written application for employment with the carrier involved in this claim and he was immediately put to work. On November 4, 1949, claimant's services were dispensed with for the reason that his age exceeded the minimum fixed by the carrier for new employes. Claimant was restored to service by the Chicago, St. Paul, Minneapolis & Omaha Railway Company on April 18, 1950. Claimant asserts that he was improperly discharged by the present carrier and he claims pay for time lost from November 4, 1949 to April 18, 1950.

Carrier asserts that it has a right to discontinue the services of claimant without penalty by virtue of Rule 36, Agreement effective November 12, 1934, which provides:

"An employe who has been in the service of the railroad thirty (30) days shall not be dismissed for any cause without first being given a hearing."

The position of the carrier is correct. It must be borne in mind that the employment or discharge of an employe is the prerogative of management except to the extent that it has limited itself by agreement. The effect of Rule 36 is that the right of the carrier to employ or discharge an applicant for employment remains unimpaired unless his application is approved by the carrier or unless he has been in service for thirty days. In the present case the applicant was in service for 24 days at the time his application was disapproved. Consequently, the carrier could properly dispense with his services for any reason, or no reason at all, without penalty. Under the situation here existing, claimant never came within the collective agreement and he cannot, therefore, assert any rights under it.

It has contended that the memorandum agreement effective July 1, 1941, had the effect of changing Rule 36. This position is not tenable. The memorandum agreement in no manner deprives the carrier of its right to deny the application of a new applicant for employment for any reason under the provisions of Rule 36. In the present case, the carrier declined to approve claimant's application within the 30 day period for the reason that the applicant exceeded the carrier's unilateral minimum age requirement for new employes. This it had a right to do, even though in other cases it might see fit to waive this unilateral rule which the record indicates it had done in some instances in the past. No basis for claim exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1951.