

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 92, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(Grand Trunk Western Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Laborer Anthony Fields was unjustly dismissed from the Carrier effective October 15, 1976.
2. That accordingly the Carrier be ordered to reinstate this employe with seniority rights unimpaired, vacation rights unimpaired, made whole for all health and welfare and insurance benefits including Railroad Retirement and unemployment insurance, and pay for all time lost retroactive to October 15, 1976.

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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant herein was hired by Carrier on August 2, 1976. On October 15, 1976 he was notified that his application for employment had been disapproved. The applicable agreement does not contain any provision for a probationary period and does provide (in Rule 7) for a hearing prior to the imposition of discipline.

The sole issue in this dispute is whether Carrier had the right to disapprove Claimant's employment application seventy five days after his hire in the absence of a probationary provision in the agreement. Petitioner insists that Claimant was entitled to a hearing and that there has been no past practice with the Organization on this property with respect to a probationary period. Carrier relies on a long history of practice involving this organization as well as others together with two other elements: the inclusion of a 90 day probationary provision in the

agreements of all the other shop craft organizations and the well established precedents in First, Second and Third Divisions' awards. In fact Carrier cites a First Division Award (3099) involving the same Carrier and the Brotherhood of Railroad Trainmen, which stated:

"In the absence of any time requirement for the disapproval of an application the rules should be construed as contemplating such action will be taken within a reasonable time. In numerous schedules 90 days is fixed as such limit. In the instant case only 10 days more were taken by the carrier to conduct its investigation which was apparently conducted in good faith."

In the instant case we are dealing with a period of 75 days. While the Agreement states that an employe's seniority starts at the time his pay starts, it is obviously conditioned upon the approval of the employment application. It is well established that in the absence of any time requirement for the disapproval of an application for employment, such action must be taken within a reasonable time or the employe will be deemed to have been accepted (Third Division Award 3152 among others). Based on the practice on this Carrier, attested to by Carrier's submissions, and the generally accepted doctrine of 90 days, the decision on the application in this case was certainly within a reasonable period of time (see Awards 866 and 956). The Claim must be denied.

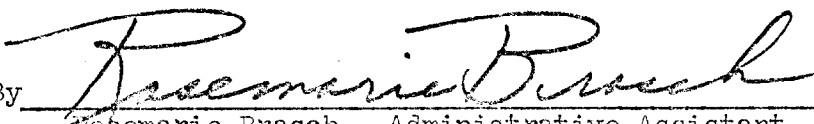
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 1st day of November, 1978.