

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: ( System Federation No. 99, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Boilermakers-Blacksmiths)  
(  
( Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That the Illinois Central Gulf Railroad has violated the current controlling Agreement, particularly Rule No. 37, at Paducah, Kentucky, by unjustly dismissing from Service of the Carrier Boilermaker Louis H. Hayden on July 28, 1976.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to restore Boilermaker Louis H. Hayden to service with all seniority and service rights, vacation rights, holidays, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensated for all lost time plus 6% annual interest on all such lost wages, also reimbursement for all losses sustained account loss of coverage under health and welfare and life insurance agreements, all this to be effective July 29, 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 employees 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 applied for employment with Carrier. He filled out an application for such employment on June 8, 1976 as well as a medical questionnaire. Claimant, as a result thereof, was called for an interview and filled out and signed an employe data record on July 9, 1976.

Claimant entered the service of Carrier on July 20, 1976. On July 27, 1976, seven days after he started working, Claimant was advised that his application for employment was disapproved and his temporary employment relationship terminated under Rule 45 which provides:

"The application of new employees shall be approved or disapproved within sixty (60) days after the applicant begins work, except in the event of applicant giving false information, approval may be revoked at any time. Employment shall be considered temporary until application has been approved."

Carrier's position is held to be correct herein. Rule 45 governed this employment relationship. Such relationship was temporary until the employment application was accepted. Said application was not accepted. Carrier is not required under Rule 45 to give any reason to justify its disapproval of any employment application. During the temporary employment period involved under Rule 45, the Investigation Rule has no application.

Here, equity is being sought and this Division is an improper forum therefor. Employees allege that Claimant told the employing officer as to his damaged knees and requested whether such would affect his employment chances with Carrier. He allegedly received assurance that it would not. Claimant in reliance thereon relinquished his nine (9) years seniority elsewhere.

However, for whatever the reason, Claimant failed to record the fact of his disabilities on either his employment application, on June 8th, or on the employee data record, on July 9th, 1976. Carrier discovered during Claimant's first week of employment that he had suffered an injury to his knee in August 1975 and that he had received medical treatment therefor as late as up to June 4, 1976. No valid basis existed for Claimant's withholding such relevant medical information. Such was pertinent to enable a proper conclusion to employ or not. Consequently withholding that information placed Claimant in the posture of having falsified his employment application.

This claim will be denied. Such denial, which includes both parts of the Claim, voids the necessity of reaching or passing comment on part 2 thereof.

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 20th day of December, 1978.