

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Burlington Northern Inc.

Dispute: Claim of Employee:

1. That in violation of the current agreement, Groundman D. L. LeClaire was unjustly dismissed from the service of the Carrier on September 22, 1976.
2. That accordingly, the Carrier be ordered to reinstate the aforementioned Groundman to service in his former position with the Burlington Northern Inc. with all seniority rights, pass privileges, vacations and/or vacation payments and holiday or holiday payments, back payments for all hospitalization, railroad retirement benefits and any other rights, privileges or benefits allowable under schedule agreements and/or law and compensated for all lost wages.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 was first employed by Carrier as crew groundman on July 27, 1976 at Northtown, Minnesota. He was later notified by letter dated September 20, 1976 that his application for employment was not accepted.

Claimant argues that Carrier violated the second half of Agreement Rule 31, which reads, "neither shall an employee be discharged for any cause without first being given an investigation" by not providing him with this proceeding. He contends that Carrier's supervisory officials were prejudicial toward him.

Contrawise, Carrier asserts that its termination decision was predicated upon evaluation considerations and accordingly consistent with the requirements of Agreement Rule 33, which provides in pertinent part that, "If application is not disapproved within sixty (60) days of commencement of service, employee's name will be placed on the seniority roster of regular employees with a seniority date as of the first day of service and employee will not thereafter be subject to dismissal except for cause, as provided by Rule 30." It avers that his on the job performance was unsatisfactory.

In considering this case we cannot, of course, disregard the relevancy of acceptable contract construction principles. It is relatively easy for one side or the other to pick and choose particular contract language and claim a specific interpretation. But a collective bargaining agreement represents a detailed document covering the parties' detailed employment relationship. In most cases, agreement language is clear and unambiguous. In other cases, the intent of a disputed provision can be discerned by observable and institutionalized past practice. In the instant case, it is quite possible to construe the second half of Rule 31 to comport with Claimant's positional interpretation. But we must consider the factual specifics of this case within the context of closely related agreement language.

Claimant had been employed fifty eight (58) days when he was informed of his dismissal. His employment application was not approved. Agreement Rule 33 (supra) permits this determination. There are no implementing specifications or identifiable past practices requiring the delineation of reasons for this decision. Carrier has a contractual right during the sixty (60) day period to reject employment applications. If it unwittingly forfeits to exercise this right before the end of the sixty (60) days period, the application is automatically validated.

Agreement Rule 30 (INVESTIGATIONS) requires that "An employee in service more than sixty (60) days will not be disciplined or dismissed until after a fair and impartial investigation has been held". It is explicit language. Claimant, in this instance, was employed fifty eight (58) days, not sixty (60) days. He would thus not be entitled to an investigation under this provision.

Under agreement Rule 31 (Establishing Competency) an employee who has been in the service of Carrier more than sixty (60) days would not be dismissed for incompetency. This criterion is patently distinguishable from discipline or dismissal actions. An employee, however, could be dismissed for incompetency, if he worked less than sixty (60) days. The second half of this provision (supra) which Claimant relies upon, conflicts with the explicit language of Rule 30, the basic and clear intent of Rule 33 and the first half of Rule 31.

In all these provisions, a sixty (60) day requirement governs the validation of an employment application, the initiation of an investigation

for disciplined or dismissal reasons and non-dismissal for incompetency. They provide, in essence, an interrelated framework for those eventualities. It is an axiomatic contract construction principle that a writing should be construed as a whole with particular clauses subordinated to the general intent. We notice in this case the presumptive inconsistency between the second half of Rule 31 and Rule 30, but the specific language of the latter provision, when read within the interpretive context of the other Rules disposes of the question.

Claimant was not charged with a specific act or an omission, he was, instead, considered an unsatisfactory employee during his sixty (60) day probationary period. It was a fitness or competency determination. Whether or not it was based on meritorious objective considerations or an ex post facto rationalization is immaterial at this point, since it was rendered within the sixty (60) day period provided by the agreement.

We have no equitable authority under this collective instrument to rectify what might appear to be questionable decisions. We will deny the claim.

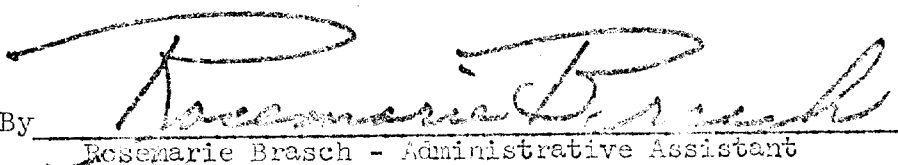
A W A R D

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 10th day of January, 1979.