

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chesapeake and Ohio Railway Company

Dispute: Claim of Employee:

1. That Carman-Tentative, John E. Marquez was unjustly disqualified from company service after he had completed thirty (30) days of service with the Chesapeake and Ohio Railway Company in violation of Shop Crafts Rules 37 and 38.
2. Accordingly, Marquez is entitled to be reinstated to service with seniority rights, vacation rights and all other benefits that are a condition of employment unimpaired, with compensation for all time lost, plus 6% annual interest. Also Marquez is entitled to be reimbursed for all losses sustained account loss of coverage under health and welfare and life insurance agreements during time held out of service.

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.

The Claimant, John E. Marquez, was assigned as a Carman-Tentative at the Carrier's Transportation Yard at Walbridge, Ohio, pending final acceptance of his employment application. On June 23, 1978, on the thirtieth day of service with the Carrier, Mr. Marquez was notified that his employment with the Carrier was terminated. The Organization states that Mr. Marquez was notified at 3:45 P.M., after the completion of his first shift assignment at 3:30 P.M. The Carrier states that Mr. Marquez was notified at 2:50 P.M., during the course of his shift.

The Organization contends that the Carrier violated the provisions of Rule 37 and 38 of the Shop Crafts Agreement on account of dismissing the Claimant from service after the 30 day period stipulated in Rule 38 expired. The Organization contends that the Claimant had completed 30 days of service on June 23, 1978. The Carrier contends that there was no violation of Shop Crafts Rule 38 or any other

Agreement rule. The Carrier contends that employment is temporary pending approval or rejection of the application. The Carrier contends that the Claimant was notified prior to the completion of 30 days; and it states Rule 37 is thus inapplicable.

We find that regardless of whether Mr. Marquez was notified on June 23, 1978 at 3:45 P.M. or 2:50 P.M., he was, in fact, notified on the thirtieth day of service. As has been held by the Board, a day commences with the time of the work assignment and ends 24 hours later -- in this case 7:00 A.M. and ending 7:00 A.M. on the following day. See for example Third Division Award 14927 and Fourth Division Award 2697. Thus Mr. Marquez would not have completed 30 days of service until 7:00 A.M. on June 24, 1978. Also, it is proper for the Carrier to remove a probationary employee from service on the last day of the probationary period. See Public Law Board No. 845, Award No. 1. The language of Rule 38 allows a probationary period of thirty days during which the Carrier can determine the competency of any new employee and/or investigate his or her employment application, and if it determines that the probationary employee is not competent or reason exists not to approve the application, the the Carrier may terminate the employee within this period of time without complying with the requirements of Rule 37. We find that Mr. Marquez was terminated within the thirty day period set forth in Rule 38. We must deny this claim.

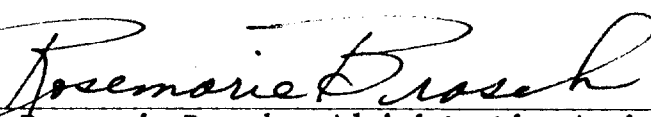
A W A R D

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 2nd day of December, 1981.