

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That the Carrier violated our current agreement when on January 26, 1979 they unjustly dismissed Apprentice Carman Denise Metcalfe from the Carrier's service.
2. That, accordingly, Carman Apprentice Denise Metcalfe be made whole, restored to service with all seniority rights, vacation rights, sick leave benefits, and all other benefits that are a condition of employment and further, be compensated for all wages lost, commencing January 26, 1979 and continuing until returned to 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.

Claimant was hired as an apprentice carman on September 18, 1978, at Carrier's Gavin Yard car repair facility in Minot, South Dakota.

Sometime late in 1978 and early 1979, a special undercover investigation was conducted by the Federal Bureau of Investigation at the Minot Air Force Base for the purpose of attempting to solve the theft of approximately \$10,000 worth of U.S. Government issue cold weather gear. As a result of said investigation, Claimant was implicated in the matter and was questioned by the federal investigators at which time she allegedly "... admitted her involvement and tendered a signed confession". Thereupon, Carrier initiated its own investigation and, while in the process of conducting same, it was discovered that Claimant "... had been arrested and charged with delivery of a controlled substance in April of 1978 and had pled guilty to the charge ... was sentenced to 18 months of imprisonment and placed on probation".

In addition to the foregoing Carrier further discovered that Claimant had not included any reference to the April incident on the employment application from which she had completed when applying for employment with Carrier.

In correspondence dated January 26, 1979, Claimant was notified by General Foreman G. L. McNeil that effective that date her "... application for employment with (Carrier) is hereby declined ..." Carrier maintains that said letter was personally delivered to Claimant by Foreman McNeil and Special Agent Ness on that same day; and that, while in the process of delivering same, Foreman McNeil advised Claimant that "... her application for employment as a Carman apprentice was disapproved for falsifying information thereon and that she had not successfully completed her probationary period under the apprenticeship program".

On February 28, 1979, Organization's Local Chairman submitted a time claim on Claimant's behalf contending that Carrier's termination of Claimant was arbitrary and thus improper, and in violation of Rules 35(a), 35 (b), 36 and 38(c). Said claim, however, for reasons which will be developed more fully hereinafter, was declined by Carrier. Subsequently, on April 11, 1979, Organization's Local Chairman requested an investigation of the matter as per Rule 36, but said claim was similarly declined by Carrier and is now the basis of the instant proceeding.

Organization's basic position herein is that Claimant had worked in excess of 60 days as a Carman apprentice and thus, as specified in Rule 36, her application for employment was approved. Continuing on, Organization further maintains that having approved Claimant's employment application, Rule 35(a) provides that such an employee "... will not be disciplined or dismissed until after a fair and impartial investigation has been held"; and still yet further, Organization additionally posits that Carrier's January 26, 1979 letter to Claimant was not in proper compliance with Rule 35(b) since said letter failed to inform Claimant of the specific reason for which her employment application was being declined.

In support of this position, Organization maintains that: (1) Claimant did not give false information on her work application form and that Carrier has failed to prove this charge (First Division Award 20471; Second Division Award 1157; and Third Division Awards 14479 and 15412); (2) Carrier's allegation that Claimant had falsified her application form was not made until March 16, 1979, when Superintendent specified said charge in his letter to Local Chairman; (3) since Carrier did not indicate until March 16, 1979, that the basis of the charge against Claimant was her alleged making of false statements on her employment application form, there was no need for Claimant and/or Organization to call for an investigation until that time; and (4) Carrier violated Rule 36 by refusing Claimant the right to have an investigation when such was requested by the Local Chairman.

Carrier, from the outset of its argumentation, charges that Claimant falsified information on her employment application form and that said "... application was disapproved in complete compliance with Rule 36 of the Agreement and due to Claimant's failure to avail herself of the specific recourse set out in Rule 36, she cannot (sic) properly pursue this claim. In support of this position, Carrier argues that: (1) Claimant's application was disapproved in writing although the applicable Rules do not require such; (2) said Rules additionally do not require that Carrier reveal its reasons for declining such an application; and (3) said Rule "... plainly provided that the 'applicant' may be dismissed even if the discovery that she submitted false information does not take place until after the sixty day period" as specified therein (Second Division Award 6877).

Continuing on, Carrier next asserts that even though Rule 36 does not require that Carrier give any reason for disapproving an employee's employment application, Claimant was specifically informed by Foreman McNeil that her application was disapproved for falsification of information thereon when he and Special Investigator Ness personally delivered the dismissal letter to her on January 26, 1979. Carrier further contends that there could not or should not have been any doubt on Claimant's part at that time as to the reason for Carrier's declination because "... after an employee has been in service more than 60 days, such as Claimant has been, there is but a single reason for the Carrier disapproving an application -- falsification of information on the application".

The next major area of argumentation proffered by Carrier herein is that Claimant erred by not requesting a formal investigation of this matter until after Organization had filed a claim -- which itself was premature -- on Claimant's behalf. According to Carrier, having specifically negotiated the right to dismiss an employee for falsification of information on the employment application form after the 60 day period, it (Carrier) "... had no obligation to afford the Claimant an investigation on its own initiative; (and) that obligation would have arisen only if the Claimant had requested an investigation". Therefore, Carrier, in summary, maintains that since Claimant failed to request an investigation of the disapproval of her employment application, as is required by Rule 36, this failure "... terminated the Carrier's responsibility in this case and this Board should not consider any issues raised beyond this point".

The Board has carefully read and studied the complete record which has been presented in the instant case and can find no good reason either in fact or in substance which would warrant or justify any modification of the penalty which has been assessed. Given that Second Division Award 6877 appears to have resolved most, if not all of the critical issues which are involved in the instant claim, and further given that said claim clearly has not been progressed in proper compliance with the parties' negotiated complaint procedure, these facts alone are sufficient to support Carrier's position as presented.

Despite Organization's argumentation to the contrary, Referee Weston's decision in Second Division Award 6877 cited hereinabove authorizes that "... the 'applicant' may be dismissed even if the discovery that she submitted false information does not take place until after the sixty day period". Additionally, as per Rule 36 itself, the disputed phrase, "... if he so desires", can only be interpreted to mean that if Claimant believes that Carrier has improperly declined her employment application, then it is Claimant's responsibility, if she so desires, to take appropriate action and initiate proceedings for the investigation of this matter. Having failed from the outset to initiate proceedings until 75 days after her employment application had already been disapproved, which was also some 42 days after the formal complaint had previously been filed on Claimant's behalf by Organization and denied by Carrier, any subsequent actions which might have taken place in this matter were clearly unnecessary and inconsequential at that point by virtue of having been compromised and thus foreclosed to any further consideration by Carrier due to Claimant's actions or lack thereof.

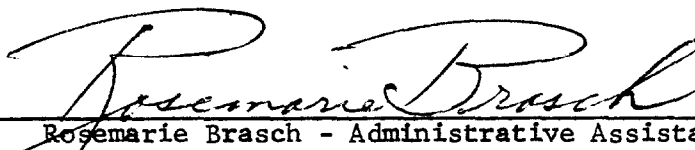
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1982.