

The Second Division consisted of the regular members and in addition Referee W. J. Peck when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
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(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That the Soo Line Railroad Company violated the current agreement when it unjustly dismissed Groundman Patrick L. Meaders from service on April 10, 1981 for no apparent reason.
2. That accordingly, the Soo Line Railroad Company be ordered to make Groundman Patrick L. Meaders whole by reinstating him to service with all seniority and other rights unimpaired and compensating him for all lost wages and benefits, and clear his record.

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 employes 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 in the instant case was employed by the Carrier on January 26, 1981, on a Carrier Communications crew. He worked through April 10, 1981. A period totaling seventy-five (75) days. On April 10, 1981, he was verbally advised by his supervisor, Mr. J. Vaness, that his service was terminated at the close of that work day.

On date of April 14, 1981, Claimant wrote Carrier protesting his termination from service and requesting a hearing. This was denied by Carrier on date of April 21, 1981. Claim has since been handled through all the steps of the "line of appeal", being denied each time. It is now before this Board.

Rule 4(a) reads:

"(a) Application for employment in telegram, telephone maintenance and construction service not rejected within 90 days from the date first worked will be considered accepted."

Rule 12 reads:

"Discipline and Grievances

Rule 12. (a) An employee who has been in the service sixty (60) days or more, and whose application has been approved, if disciplined or dismissed will be advised of the cause for such action in writing.

(b) An employee disciplined or dismissed, or who considers himself unjustly treated, shall have a fair and impartial hearing, provided that a written request is presented to his supervisor within ten days of date of advice of discipline; the hearing shall be granted within ten days thereafter, and decision will be rendered within ten days after completion of hearing."

The employees contend that the Carrier violated the provisions of the above cited provisions of Rule 4 in that they did not at any time advise Claimant of the cause of his dismissal.

They further contend that Carrier violated the terms of Rule 12(b) in that despite Claimant's written request for a hearing, none was granted.

Carrier on the other hand contends that because Claimant had not been employed for a full 90 days that they were not required to give any reason for terminating Claimant's service with the Carrier.

They also contend that for the same reason they were not obligated to comply with Claimant's request for a hearing.

Carrier also alleges that Claimant was not disciplined, however, in their letters denying the claim they use the words dismissed or dismissal no less than eight times and dismissal is certainly discipline, it is in fact, the ultimate discipline.

Both sides cite numerous Board Awards in support of their position, but neither side cites any rules worded the same as those in the instant case, or if any is the same they do not quote that particular part.

In considering all of the facts in this case we note the following:

Under the provisions of Rule 4(a) Carrier certainly does have the right to reject an employee's application for employment any time within the specified 90 day period. However, they made no claim that this application for employment had been rejected until after the employee had filed a claim, which makes the alleged rejection appear very much like an after thought. Also, as previously noted, Carrier refers to the Claimant being dismissed or to his dismissal no less than eight times. If the Claimant's application had been rejected or not approved there would be no reason to dismiss him, it would in fact be impossible to dismiss him as he would no longer be an employee of the Carrier.

We also note that Rule 12 paragraph (b) reads in part:

"(b) An employee disciplined or dismissed, or who considers himself unjustly treated, shall have a fair and impartial hearing provided that a written request is presented to his superior within ten days of date of advice of discipline..."

The employe certainly did consider himself unjustly treated as he did file a claim and did as for a hearing and well within the ten day period. Therefore, to deny this claim as Carrier has requested would be to deny the existence of Rule 12, Paragraph (b) as well as overlook the fact that Carrier has clearly stated that Claimant was dismissed which is definately discipline.

Faced with all of these facts we will rule that the Claimant must be returned to the same position at the same location, if it still exists, or a comparable one if it does not, with a clear record and with all seniority and with whatever benefits such seniority entitles him, but with no compensation for lost wages.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1984