

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13098

Docket No. 12999-I

97-2-95-2-14

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Benjamin Rivera

PARTIES TO DISPUTE: (

(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"1. That the Atchison Topeka and Santa Fe Railway Company violated the terms of the current Agreement, particularly Rules 32, 39, 40, 42, 47, 115, 117, and 118, when they arbitrarily and wantonly, wrongfully discharged Benjamin Rivera from service. Such action was without just cause or a rule violation. No rule violation charge was made thereby none proven.

2. That, accordingly, the Atchison, Topeka and Santa Fe Railway Company compensate Benjamin Rivera for all time lost, including overtime, from January 12, 1994, until returned to service, with fringe benefits unimpaired, Railroad Retirement payments made, vacation benefits, health and welfare benefits and all other benefits that have been wrongful denied as a result of the wrongful discharge. That his personal record be cleared of this matter and returned to service immediately, making him whole."

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 were given due notice of hearing thereon.

Claimant's first day of service with the Carrier was December 13, 1993. On January 12, 1994, Claimant was advised that his employment was terminated by reason of disapproval of his employment application.

Rule 42 reads as follows:

"... (a) Applicants for employment (individuals not having an employment relationship with the Company) shall be required to furnish information as may be desired to fully satisfy the Company's representatives as to their fitness and competency for employment. Their employment may be terminated without formal investigation by disapproval of application within sixty (60) calendar days after the applicant begins work.

(b) After an employee has been in service for more than sixty (60) calendar days and an investigation develops that he has falsified his application for employment he may be relieved from service by invoking the provisions of Rule 40.

(c) Applicants for employment will be required to pass physical examination by a company physician." (Emphasis added)

There is nothing further this Board needs to consider. Claimant was on probation for a period of 60 days during which period, Carrier can, for whatever reason, reject the employee's application for employment without the need to hold an Investigation.

The Claimant, if he disagrees with Carrier's decision to terminate his probationary relationship as provided in Rule 42, is not precluded by the Agreement from seeking redress. The Claimant must, as provided in Circular No. 1 of the Board, however, handle said dispute "in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes...." The aforementioned excerpt is from the paragraph captioned "CLASSES OF DISPUTES" in Circular No. 1 of this Board. Rule 39, captioned "GRIEVANCES" prescribed the "usual manner" claims and or grievances are handled on this property.

The claim before this Board has not been handled "in the usual manner" on the property before being progressed to this Board.

A second, but ever so vital aspect of claim handling stressed both in the Railway Labor Act and in Circular No. 1 of this Board, is the need to conference claims in an attempt to talk them out and settle same.

The Claimant has attached as Exhibit "8" a letter dated January 10, 1995, allegedly confirming conference that Carrier, in its submission to this Board, says never took place. In other words, the Carrier alleges the January 10, 1995 letter is bogus in content. Although Carrier's position on the no conference issue appears sound, the Board finds no need to pursue that avenue for resolution of this dispute.

To reiterate, Rule 42, quoted supra, is the Rule which Carrier did fully comply with. Claimant was notified in less than 60 days that his employment application was disapproved.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of January 1997.