

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13099

Docket No. 13024-I

97-2-95-2-51

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

(John V. Poll

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, 115, 117 and 118, when they arbitrarily and wantonly, wrongfully terminated John Poll from service on June 9, 1994. Such action was without just cause or a rule violation. No rule violation charge was made, thereby none proven.

A. Breach of employment contract, in that Claimant was hired, causing him to resign a job of some 14 years, thereby completing his working career for the Atchison, Topeka and Santa Fe Railway Company.

2. That, accordingly, the Atchison, Topeka and Santa Fe Railway Company compensate John Poll for all time lost, including overtime, making him whole from June 9, 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 termination and breach of employment contract. 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 commenced service with the Carrier on April 11, 1994. His last day of service was June 8, 1994, which started at 11:40 PM and ended 8:00 AM on June 9, 1994.

Claimant argues that he had sixty days of service, thus Rule 42 was no longer applicable. The Carrier contends his application was disapproved on the 59th day which was timely and proper pursuant to Rule 42.

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 employe 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)

Although the disapproval letter of June 8, 1994, was bare bones, it was in full accord with the language of Rule 42. Later, while processing this dispute, Claimant was advised why his employment application was disapproved.

Under the circumstances, Carrier's action of disapproving Claimant's application for employment was timely and properly written as provided for in Rule 42.

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.