Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13117
Docket No. 12955
97-2-94-2-106

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"1. That in violation of current controlling Agreement, at the Oakland AMTRAK Equipment Maintenance Yard, the National Railroad Passenger Corporation, failed to approve or disapprove Claimant's application for a Journeyman Electrician position within the prescribed 90 calendar day from receiving application.

2. That accordingly, the National Railroad Passenger Corporation be ordered to compensate Electrician Abner Morgan, for the difference in rate of pay from August 15, 1990 until April 23, 1992, and correctly adjust seniority roster to reflect August 15, 1990 as a Journeyman Electrician for Claimant."

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.

This dispute, if not frivolously advanced, is bizarre to say the least. Search of the archives of this Board suggests that it is one of first impression, not only to this Division, but to all. It is obvious that Claimant is considering his employment application as an application for a specific position, and is using Carrier's "default approval" of his employment application as a vehicle to attempt to secure unjust enrichment in the way of additional compensation and seniority.

The facts, as the Board understands them, are that on August 13, 1990 Claimant made application for employment with Amtrak. Two days later, August 15, 1990 was his first day on the job. At the time he was assigned to work as an Electrician Helper with a negotiated entry rate of pay of 85% of the journeyman Electrician rate of pay, because he had no previous railroad Electrician service. Claimant worked as an Electrician Helper at the 85% rate until April 23, 1992 when he was upgraded to Electrician. Thereafter, he was paid the full rate of pay. Claimant contends that when he applied for Amtrak employment he specifically applied for an Electrician's position, not an Electrician Helper's position, and the Carrier failed to approve or disapprove his application for an Electrician's position within 90 days as provided in Rule 3(a). Therefore, as a result of Amtrak's failure to approve or disapprove his application within 90 days, he contends he should be paid the full Electrician's rate of pay retroactively to date of hire, and that he should also be given a seniority date of August 15, 1990 as a journeyman Electrician.

The Carrier defends against payment of the journeyman rate effective August 15, 1990 and establishment of an earlier seniority date on a variety of grounds, both procedural and substantive. Because the Board considers the matter to be so totally without merit, it is not necessary to visit the procedural arguments advanced by the Carrier, except to note that upon review of the record it is apparent that the Claimant would not prevail even if his claim had merit, which it does not.

Rule 3(a) provides in pertinent part:

> "Applications for newly-hired employees shall be approved or disapproved within 90 calendar days after applicants begin work. If applications are not disapproved within the 90-day period, the applications shall be considered as having been approved."

The language of the Rule is pretty standard throughout this industry, in all Crafts. The Rule is administered in a pretty uniform fashion on all carriers, and it is pretty well understood by everyone, including the new hires that it applies to. All that the Rule requires is that an application for employment be approved or disapproved within 90 days, and if the application of newly-hired employee is not acted on within that time frame, the application shall be considered as approved. The Rule covers applications for employment only. It does not pertain to any type of application for a particular job, after employment. To the knowledge of the Board, the Rule has never been administered any differently, on any property, at any place, at any time. What the Rule does is establish a probationary period for new employees.

It is absurd and ludicrous to argue that because the Claimant sought to be hired as an Electrician, but instead was given an Electrician Helper's position, and that Amtrak did not specifically approve or disapprove his employment application within 90 days, he should now be given Electrician's pay and seniority back to the date of hire. First off, Claimant accepted and worked the Helper position and knew what his rate of pay was. This is memorialized in Carrier's Personnel Action Request completed on August 13, 1990. Second, in practice (almost universal practice) employment applications are almost never specifically approved. If something happens in the 90 day window for approval or disapproval, it is disapproval that occurs. The 90 day period is a probationary period, and that is what the Rule serves. When applications are approved they are usually approved by default because the 90 day window expires without formal disapproval.

Default approval of an application for employment had ought not establish a technical situation where an employee receives windfall wages he did not earn and a seniority date he is not entitled to, simply because the employee claimed that he was applying for an Electrician's job, but was placed on a Helper's job instead.

The claim is completely without merit.

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 6th day of May 1997.