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NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 13762  
Docket No. 13636  
03-2-01-2-36

The Second Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Thomas B. Daman  
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

“Norfolk Southern Railroad employee, Thomas B. Daman, began his employ with this carrier on January 31, 2000, as a highly recommend person, after successfully completing various tests, interviews, company physical, and indoctrination. He entered into an electrician apprentice program and performed as an intelligent, efficient, conscientious worker, on the job and in his training assignments. Mr. Daman was a superb employee and recognized as such by being voted onto the company Safety Committee by shop manager Mr. Ramey and three other Senior General Foremen, and other committee members, this induction membership vote was conducted on May 3, 2000. W Daman had a fine record of excellence as a Norfolk Southern employee.

Then without cause, employee, Daman, was terminated from Norfolk Southern Railroad on June 12, 2000, while he was at his job, building a consist of locomotives for an outbound train.

Questions upon which an award is desired are as follows: A scheduled Formal Investigation Hearing was never afforded to employee, T. B. Daman, as per Norfolk and Western Collective Bargaining Agreement dated June 1, 1985. Formal Investigation Hearing procedure is at section B. 1. (a through e) of this Agreement.

The Student Mechanic Agreement effective May 1, 1971, was violated in its entirety, including section L (a through d) and Section 3.

Other carrier agreements, enumerated under the Position of Employee caption of this submission, were violated upon this employee, because of the unjust termination upon him.

Also federal and state laws which prevent discrimination based on age were violated by Norfolk Southern Corporation upon employee, T. B. Daman, because two younger (electrical apprentices) student mechanics, in age and in seniority, were retained by the Carrier when W Daman was terminated. Specific violations include Article I., Section 26. of the Constitution of Pennsylvania and The 14th Amendment, Section 1. of the Constitution of United States, and other anti-discrimination laws.

Remedy sought for these violations are: payment of all lost time wages incurred since the termination, payment for employee benefits lost, payment for suffering to Mr. Daman and his family due to the loss of his employment as the sole supporting wage earner in his family of seven, and full reinstatement to his prior position as electrician with credited time back to the date of termination. And any additional remedy deemed appropriate by the National Railroad Adjustment Board in their Award is requested."

**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.

Mr. T. B. Daman ("the Claimant") was hired by the Carrier on January 31, 2000, as a student electrician at its Conway Diesel Shop located near Pittsburgh, Pennsylvania. As such, the Claimant's employment was subject to the terms of a training program established by the May 1, 1971 Training Agreement between the Carrier and the International Brotherhood of Electrical Workers (IBEW). Phases I, II and III of the training program are formal classroom sessions and are usually conducted at the Carrier's McDonough, Georgia, Technical Training Center. Phase IV is on-the-job training (OJT) and normally follows the first three phases of classroom instruction; however, on occasion, a student will receive a few days of OJT (Phase IV) prior to the classroom training (as did the Claimant for ten days).

Among other provisions, that Training Agreement provided for a 60 day probationary period in Phase IV, during which student electricians may be dropped from the program, as follows:

"All student mechanics shall be subject to a probationary period during Phases I, II and III and for the first 60 creditable days of training in Phase IV as defined in Section 4(c) (4) hereof. A student mechanic who shows no aptitude to learn the trade within said probationary period may be dropped from the program after review of his record by the General Chairman of the craft involved and the Assistant Vice President, Labor Relations, or their designated representatives."

While the Claimant was still well within the above-referenced Phase IV probationary period (35½ days by the Carrier's reckoning; 45½ days by the Claimant's reckoning), the Carrier notified him of his termination by letter dated June 10, 2000, as follows:

"This is to advise that you are currently in the probationary period as defined by Section 3 of your training agreement. One of the

primary attributes necessary to become a permanent employee with this Carrier is the ability to properly receive and carry out instructions.

In view of your performance in this regard, while in training at Conway Diesel Shop, it has become necessary for us to drop you from the Student Electrician Training Program and terminate you from all service with this Carrier.”

By letter dated August 10, 2000, which was received by the Shop Manager on August 14, 2000, the Claimant filed the instant claim alleging that his termination from the training program was in violation of his rights under the Training Agreement, the Collective Bargaining Agreement, various state and federal laws and the United States Constitution. After the initial claim was denied on September 20, 2000, the Claimant appealed the matter to Carrier's Director-Labor Relations, who is the designated highest level officer to handle such appeals. His appeal letter was posted on November 27, 2000, and received by the Carrier on November 29, 2000. The final denial dated January 10, 2001 rejected the claim on its merits and because neither the original claim nor the appeal had been filed in conformance with time limits set forth in the provisions of Article V, Section I (c) of the August 21, 1954 Mediation Agreement. Some ten and one-half months later, by Notice of Intent letter dated November 27, 2001 and received on November 30, 2001, the Claimant appealed the Carrier's denial of his claim to the Second Division of the NRAB.

The claim suffers from multiple defects in handling which undermine the jurisdiction and authority of the Division to make any findings on its merits. Even if, arguendo, the compounded time limit violations in the Claimant's filing and appealing the claim on the property and failure to conference the claim prior to submission to the Board were not fatal under Section 2 of the Railway Labor Act and Circular No. 1, the Claimant did not invoke NRAB jurisdiction until ten months and 20 days after the January 10, 2001 denial of his claim by the Carrier's highest designated officer. This is a plain and fatal violation of the nine-month time limitation for such appeals to arbitration set forth in Article V (c) of the August 21, 1954 Mediation Agreement. Based on all of the foregoing, we are constrained to

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**dismiss the claim for lack of jurisdiction, with no further comment. See Second Division Award 7453 and the myriad supporting authorities cited therein.**

**AWARD**

**Claim dismissed.**

**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 1st day of October 2003.**