

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

CHICAGO UNION STATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated rules of Agreement effective November 1, 1940, when on January 13, 1954, they removed Mr. Bozo Zebich, Mail Handler, Chicago Union Station, from service without affording him formal investigation, provision for which is made in the rules of said Agreement.

(b) Mr. Zebich be reinstated to service and compensated for wage loss sustained from January 13, 1954, to date of his reinstatement.

EMPLOYEES' STATEMENT OF FACTS: Mr. Zebich was hired as a Mail Handler by the Carrier on October 28, 1953. On December 6, 1953, Mr. Zebich was injured when one of the trap doors covering the moving belt along Track 28 was dropped on his foot. During his convalescent period December 6, 1953, to January 8, 1954, he was under the care of the Carrier's medical representatives at the Wesley Memorial Hospital. On January 8, 1954, the Company's doctor released Mr. Zebich for return to service as of January 13, 1954.

January 12, 1954, Mr. Zebich reported to his immediate supervisor, Mr. R. J. Size, Assistant General Baggage and Mail Agent, who advised him that his services were no longer required and to look for work elsewhere.

January 14, 1954, the matter was discussed verbally with Mr. Shiffer, Assistant General Manager, by General Chairman Hall, Mr. Shiffer stating that Zebich's application for employment was disapproved under the provisions of Rule 24 of our General Rules Agreement and that the provisions of Rule 25, Investigation and Hearing, did not apply.

Further efforts were made to compose the grievance on the grounds by verbal handling with Mr. Shiffer on January 15 and January 18, 1954, but to no avail.

January 28, 1954, the case was formally presented to General Baggage and Mail Agent, Mr. R. B. Hunter. Employees' Exhibit No. 1.

justment Board—Third Division, giving effect to the said applicable Agreement rules, should deny the claim of the Organization and sustain the position of the Carrier.

Carrier demands strict proof by competent evidence of all data and statements relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows the following essential facts. On October 28, 1953 Claimant was hired by Carrier as a Mail Handler, Union Station, Chicago, Illinois. On December 6, 1953 Claimant sustained an injury while on duty, was incapacitated and placed in a hospital, being under the care of Carrier's Medical Examiner, that is, to the extent that he was not to return to work until given release by that official to return to work. After release on January 8, 1954, with resumption of duties authorized for January 13, 1954, Claimant reported to his superior officer on January 12, 1954 at which time he was advised that his services were no longer required. The stated reason given being that his application for employment was disapproved on December 24, 1953. No previous notice of this fact was given to Claimant prior to January 12, 1954.

Apparently this claim must be decided on the above facts and Rules 24 and 25 of the effective Agreement.

Rule 24 provides as follows:

"The applications of new employes shall be approved or disapproved within sixty (60) days after applicant begins work. In the event of applicant giving false information this rule does not apply but applicant shall not be denied the right of hearing upon request."

Sub-division (a) of Rule 25, provides:

"An employe who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation. * * *"

Respondent Carrier states that a record was made of disapproval on December 24, 1953, however, there is no showing that Claimant was notified of this fact.

In accordance with the provisions of the above cited rules when applying the facts herein to the same we find that Claimant had been in service more than sixty days on January 12, 1954. There is no record here that he was given an investigation as contemplated in (a) of Rule 25. Carrier states that it made a record of disapproval within the sixty day period, but Claimant was not so notified and it cannot be said that such notice is binding on him. Apparently through oversight he was not notified, undoubtedly someone was at fault in this respect. While he did not request a hearing as provided in Rule 24, yet in reading the two rules together, (a) of Rule 25 he had been in service more than sixty days prior to notice being given him of disapproval, therefore, we conclude that he was entitled to an investigation whether he requested the same or not and no investigation was given him, which again shows an oversight or a misunderstanding of rules which in our opinion are not ambiguous.

Carrier urges several defenses which we deem insufficient to meet the clear meaning of the rules cited above and on behalf of Carrier other de-

fenses are presented which we deem likewise do not apply in this situation. To go into these various defenses would serve no useful purpose in the Opinion, suffice to say, there is no dispute on the facts and we consider the rules clear and not ambiguous. Therefore, claim should be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated as per Opinion.

AWARD

Claims (a) and (b) sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of March, 1955.