



Award No. 15026
Docket No. SG-16015

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Burlington and Quincy Railroad Company that:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Rule 60, when it dismissed Larry D. Schmieder on March 2, 1965, and refused to grant his written request for an investigation.

(b) Carrier be required to reinstate Mr. Schmieder with his seniority rights unimpaired, and compensate him for all time lost since March 2, 1965. [Carrier's File: 011.121]

EMPLOYEES' STATEMENT OF FACTS: Claimant Larry D. Schmieder began working as a Signal Helper on December 7, 1964, and he was listed as such on the 1965 Lines East Seniority Roster which showed his Rank in the Helper Class as No. 209. (Seniority begins when pay starts — Rule 37.)

Carrier removed Claimant from service March 2, 1965, without explanation, investigation, or hearing of any sort. On March 5, 1965, he wrote Chief Signal Engineer A. L. Essman for an explanation, and the latter gave the following reply under date of March 11, 1965:

"The reason for termination of your services is that your application for employment was disapproved."

Under date of March 8, 1965, Claimant wrote to Signal Supervisor F. T. Bullock and asked for an investigation under Rule 60 of the Signalmen's Agreement. That request was denied by Mr. Essman, to whom the Supervisor had referred the request.

On April 2, 1965, Claimant asked the Superintendent for an investigation. That request was likewise denied. See Brotherhood's Exhibit Nos. 2 and 3.

Under date of April 13, 1965 (Brotherhood's Exhibit No. 4) the General Chairman presented a claim on behalf of Claimant, asking that he be rein-

the inquiries was returned to Carrier with advice that claimant had never worked for him. Another inquiry was returned from one of the former employers listed by claimant with information concerning his habits, activities, work record and propensities that indicated without question that claimant did not meet the standards set by this Carrier for new employees. His application for employment was thereupon disapproved by the Superintendent of Employment in letter dated February 16, 1965, reading as follows:

"Chicago, Illinois
February 16, 1965

Mr. A. L. Essman
Building

Application for employment made by Larry D. Schneider, No. 843,659, who began work as a signal helper at Aurora, Illinois, on December 7, 1964, is not approved.

If he is still working, his services should be terminated promptly and form 6151 issued.

/s/ R. D. Walker
Supt. Employment"

The above quoted letter was transmitted through channels and reached the foreman of the gang in which claimant was working at St. Paul, Minnesota on March 2, 1965, on which date he was notified of the disapproval of his application for employment, and he was relieved from service on that date. Both the letter of disapproval and the date that claimant was relieved from service were within the 90 day time limit specified in Rule 71 quoted above.

The schedule of rules agreement between the parties, effective July 1, 1952, and amendments thereto, is by reference made a part of this submission.

OPINION OF BOARD: Claimant began working as a Signal Helper on December 7, 1964. His application for employment was disapproved. Claimant was personally notified March 2, 1965 and relieved from service on that date.

Claimant subsequently requested an investigation under Rule 60. Carrier refused request on the basis his application for employment was disapproved in conformity with the provisions of Rule 71, and that Rule 60 provides for an investigation only if an employee is dismissed or disciplined.

Under Rule 71 (Application for Employment) applicants shall be considered temporary until application has been approved or disapproved within ninety (90) days after applicant begins work. Applying this Rule to the case at hand, we find Claimant was in a temporary, not permanent, status, pending approval of his application. Carrier complied with the time limit, by disapproving Claimant's application within the ninety (90) days. We cannot ignore that he was also put on notice of this temporary status as the application he signed, when hired, explicitly stated that ". . . my employment shall be considered temporary until this application is approved . . ."

Rule 60 (Investigations) relates to discipline or dismissal for some act of the employee after acceptance on a permanent basis in the Carrier's service. We do not find that this rule extends to an investigation of qualifications of an applicant for employment.

This Board has consistently held that when a temporary employe is removed from service because of disapproval of an application for employment the investigation, hearing, and seniority rules are not applicable.

Referee Bailer, Award 8536 said:

"The question of false information aside, the meaning of this rule is that a new employe is on a probationary status during the first ninety days, and that he may be discharged within that period without recourse under the Agreement."

We find therefore, that the investigation Rule, Rule 60, is not applicable in this case as Claimant never became an accepted or permanent employe under the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1966.

DISSENT TO AWARD 15026, DOCKET SG-16015

The Majority committed serious error in blindly accepting Carrier's argument "that Rule 60 provides for an investigation only if an employe is dismissed or disciplined," when the relevant portion of Rule 60 unequivocally provides that —

"An employe who has been in service more than thirty (30) days will not be disciplined nor dismissed without an investigation when same is requested in writing. * * *"

Claimant had been in service more than thirty days, he was dismissed — Carrier used “termination of your services” which cannot reasonably be interpreted as meaning something other than dismissed — and he requested an investigation in writing. Nevertheless, the Majority construes the rule as applying only “to discipline, or dismissal for some act of the employe after acceptance on a permanent basis in the Carrier’s service.” Patently, there is nothing in the pertinent portion of Rule 60 that limits its application to employes who have attained permanent status and the Majority exceeded its authority in reading such exception into the rule.

Throughout the life of this Board, it has been accepted that the Board’s function is to interpret and apply rules as they are met. It is not authorized to read into a rule that which is not contained therein, or by an award add to or detract from the clear and unambiguous provisions thereof, yet that is exactly what the Majority has done in this case.

What a similar Majority did in a previous case or cases involving different parties and agreements, not Signalmen, neither justifies nor diminishes the gross error committed by the Majority in this case; therefore, I dissent.

G. Orndorff
Labor Member