Award No. 19177

Docket No. TE-19351

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
(Formerly Transportation-Communication Division, BRAC)

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Grand Trunk Western Railroad Company, T-C 5809, that:

1. Rule 14 page 23 of the current agreement between this organization and the Grand Trunk Western paragraph (a) reads as follows. "Applications for employment will be approved or disapproved within sixty (60) calendar days after applicant begins work. If application is not disapproved within the sixty day period, the application will be considered as having been approved etc."

2. It is our contention that Mr. LaRue's application was approved as outlined in Rule 14 and therefore this letter is to be considered a claim on behalf of Mr. LaRue for each day he would be entitled to work under the agreement continuing until such time as he is reinstated to his position as relief agent which he held at the time of his removal from service. (Above copied from claim letter dated December 16, 1969.)

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

This dispute is predicated upon the provisions of an Agreement between the parties dated November 1, 1955, as amended and supplemented and is by this mention made a part thereof. The dispute arose because Carrier did not disapprove the application for employment by Claimant within sixty days.

Carrier contends it disapproved the application of Claimant within the sixty (60) calendar days as the Agreement specifies.

Employes contend Carrier in letter dated December 8, 1969 waited sixty-one (61) days to reject Claimant's application and in addition again disapproved his application as late as December 30, 1969 or eighty-three (83) days after Claimant's seniority date.

clination was not acceptable and that this case would be forwarded to the Grand Division for further handling.

Copies of the November 1, 1955 Working Agreement in effect between this Carrier and the T-C Division-BRAC, (formerly the Order of Railroad Telegraphers) are on file with the Third Division, NRAB.

OPINION OF BOARD: Claimant began his employment with Carrier at 8:00 A.M. on October 9, 1969. On December 8, 1969 Carrier notified him that his application for employment had not been approved. After protest from his District Chairman, Carrier returned him to service on December 29, 1969. He worked on December 29, 1969 and December 30, 1969. Carrier notified him on December 30, 1969 that his application had again been rejected.

Claimant contends that his rejection on December 8, 1969 was untimely, since he claims that it occurred on the sixty first day, one day too late. He also, claims that, in any event since he worked on December 29 and December 30, the rejection of his application was untimely.

Carrier defends the claim by asserting that his rejection on December 8, 1969 was on the sixtieth day, and thus timely, and that Claimant's return to service was a re-employment which began a new sixty day period of probationary employment.

In Second Division Award No. 3545 (Lloyd H. Bailer) the Board was faced with the application of a time limit rule and stated:

> "The general rule (in law) is that the time within which an act is to be done is to be computed by excluding the first day and including the last, that is, the day on which the act is to be done * * *" 86 Corpus Juris Secundum 13(1). 'The words 'from' and 'after' are frequently employed as adverbs of time, and when used with reference to time are generally treated as having the same meaning.' Ibid, 13(3). 'Thus, if something is to be done 'within' a specified time 'from' or 'after' a given date or a certain day, the generally recognized rule is that the period of time is computed by excluding the given date or the certain day and including the last day of the period, and similarly, if something is to be done 'within' a specified time 'from' or 'after' a preceding event, or the day an act was done, the day of the preceding event or on which the act was done must be excluded from the count.' Ibid, 13(7).
>
> We think the foregoing method of computing time is the only reasonable application of the agreement language in question. If the agreement required that timely appeal from the Carrier's decision must be made within one day from the date of said decision, it would be illogical to hold the appeal must be taken on the same day as the denial. If the Carrier's decision were presented by mail, such an interpretation would deprive the Organization of any effective right of appeal. If the prescribed appeal period were 5 days, this interpretation would in fact afford ony 4 days for appeal."

Rule 14 of the Agreement states:

> "(a) Applications for employment will be approved or disapproved within sixty (60) calendar days after applicant begins work. If application is not disapproved within the sixty (60) day period, the

application will be considered as having been approved. Applicants will within sixty (60) days from date of employment, have returned to them all service cards, letters of recommendation and other papers which have been furnished by them to the Carrier, for investigation."

The Board holds that the rejection of Claimants' employment application came on the sixtieth day and was therefore not untimely. The rationale expressed in Second Division Award No. 3545 and Rule 14 of the Agreement both support this conclusion. The sixty day period did not begin to run until October 10, 1969 and thus the notice given to Claimant on December 8, 1969 was timely. The language of Rule 14 requires this interpretation. It states that applications must be disapproved within sixty calendar days after the applicant begins work. This language shows that the parties intended the period to exclude the first day of employment.

As noted, the Claimant worked two days after his first notice, and after protest by the District Chairman. The record is void of evidence showing that this second period was a re-instatement. Since he had been effectively terminated, and since Carrier's notice of December 30 advised him,

> "After having been re-employed as a new employe again on December 29, 1969, your application for employment with the Grand Trunk Western Railroad again has been disapproved."

the Board holds that his second period was re-employment and not re-instatement. Therefore the two days worked, on December 29 and 30, cannot be tacked onto his sixty day probationary period.

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 Employes involved in this dispute are respectively Carrier and Employes 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1972.

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