

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19674
Docket Number SG-19633

Irwin M. **Lieberman**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Erie Lackawanna Railway Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalmen on the Erie Lackawanna Railway Company that:

(a) Carrier violated the Signalmen's Agreement, as amended, particularly Rule 60, when it arbitrarily and capriciously dismissed Assistant Signalman Richard Apostolik.

(b) Carrier be required to reinstate Richard Apostolik to his **former** position in Signal Gang No. 52 with all employment rights restored, including seniority, and pay him for all time lost as a result of the **dismissal**.

(Carrier's File: 1 7 7 **Sig.**)

OPINION OF BOARD: Claimant was employed by Carrier May 14, 1970. Claimant was notified on July 2, 1970 that his application for employment was disapproved, and he was dismissed. Petitioner urges that Carrier's action was a violation of Rule 60 of the applicable Agreement in that Claimant was entitled to a hearing under that rule. The pertinent section of that rule reads:

"An employee who has been in service more than thirty (30) days will not be disciplined or dismissed without a fair and impartial hearing...."

The Carrier states that its action was proper under the **terms** of Rule 32, which reads in part:

"No seniority will be established by a new employee unless his employment application is approved. Employment applications not disapproved within ninety (90) days will be considered accepted."

The crux of Claimant's position is that an employee with more than thirty days service (but less than ninety) must be afforded the opportunity under Rule 60 to challenge the basis for the disapproval of his application.

In First Division Award 12027 we said: "It is the holding of this Division that one temporarily employed pending the approval of an application for employment does not come under the investigation rule". Along the same lines, we said in Second Division Award 866 "Rule 17(a) relates to discipline, suspension or discharge for some act of the **employee** after entering the service of the carrier. This rule does not extend or purport to extend to an **investigation** of the qualifications of an applicant for employment". Significantly,

in Third Division Award 8536 we said: ". . .The meaning of this rule is that a new employee is on a probationary status during the first ninety days, and that he may be discharged within that period without **recourse** under the Agreement."

The meaning of the two Rules would **appear** to be clear; an employees application for employment may be disapproved for any reason during his first ninety days of **employment**, and he has no recourse under Rule 60. It has been well established by this Board that the Carrier **has** the right to determine the physical and other qualifications of its employees during a probationary **period** without **challenge**. However, it is **also** mandatory that an employee with more than 33 days of service **must** be afforded an investigatory hearing and proper "due process" under Rule 60, prior to disciplinary action.

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** not violated.

A W A R II

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **23rd** day of March 1973.