

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19805**
Docket Number CL-19939

Frederick R. **Blackwell**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-7182**)
that:

(1) Carrier violated the Clerks' current Agreement on November 29, 1971, when it permitted and allowed Superintendent R. D. **Krebs** to disapprove application for employment of Mr. Randall Scott Thomas thereby dismissing him from employment of the Carrier without investigation.

(2) That Clerk Randall Scott Thomas now be reinstated to the service of the Carrier with seniority and all other rights unimpaired.

(3) That Clerk Randall Scott **Thomas** now be compensated for all wage and other losses sustained from November 29, 1971, account the arbitrarily dismissal.

OPINION OF BOARD: On September 23, 1971 claimant began work as a student telegrapher and continued in that capacity until September 30 **or** October 1, 1971. On or after October 1, he began work as a clerk. On November 29, 1971, his application for employment as a clerk was disapproved by Carrier. He requested a hearing but the Carrier asserted its action was taken within the 60 day probationary period specified in the **Agreement** and, hence, it was not required to grant a hearing.

The parties agree that claimant was employed on September 23 under the Student-Telegrapher Agreement and that such Agreement became void on October 1, 1971, by reason of other agreements which combined the Clerks and Telegraphers Agreements and seniority rosters. The parties also agree that claimant's **student-**telegrapher work commenced more than 60 days prior before his application for employment was disapproved, and that his first work under the combined Agreement was within 60 days of the disapproval of his application. Thus, if claimant's student tenure is counted against the 60 day period, the Carrier violated the combined Agreement; if such tenure is not counted, there was no violation by Carrier's action.

The Petitioner points to the fact that claimant's application for employment as a student-telegrapher is the only application in Carrier's files and that, the relationship between claimant and Carrier is necessarily based upon this application. Petitioner further asserts that claimant's work as a student-telegrapher was **work** under the combined Agreement and, consequently,

Carrier's action violated Rules 21 and 23-1 of that Agreement. Carrier's position is that claimant had not been in service covered by the combined Agreement for 60 days when his application for employment was disapproved, and that the prior student tenure has no bearing on the matter.

The pertinent rules and pertinent part of the Student-Telegrapher Agreement read as follows:

"RULE 21 - Validating Records

The application of a **new** employee shall be approved **or** disapproved within sixty (60) days after the applicant **begins** work, unless a longer time is mutually agreed to by the Carrier and the representative of the employees."

"RULE 23 - Discipline and Grievances

23-1. Investigation: An employee who has been in the service more than sixty (60) days or whose application has been approved shall not be disciplined **or** dismissed without investigation at which investigation he may be represented by one **or** more duly accredited representatives. He may however, be held out of **ser-**vice pending such investigation. **The** investigation shall be held within seven (7) days of the date when charged with the offense **or** held from the service. A decision will be rendered within seven (7) days after the completion of investigation. At a reasonable time prior to the investigation the employee shall be apprised in writing of the precise charge against him."

"Student-Telegraphers: * * * * *

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4. When student telegraphers have completed their period of training and have been accepted by the Superintendent as qualified, their seniority shall be established in accordance with Article 18-2 of the Telegraphers' Agreement.

5. No provision of the Telegraphers' **Agreement** shall apply to student telegraphers during their period of training,"

A plain reading of Rule 21 shows that the 60 days probationary period begins to run when the applicant "begins work"; **accordingly**, the question here is whether claimant's work **or** tenure as a student telegrapher amounted to "work" as

such term is used in Rule 21. That **claimant** submitted only one formal employment application to Carrier has no relevance to resolution of this question; an examination of what he did while serving as a student-telegrapher, and the understanding of the parties in respect thereto, is the sole determinant of whether his student service constituted work within the meaning of Rule 21.

We believe the above quoted provisions from the Student-Telegrapher Agreement **compel** the conclusion that **student** work is not work within the meaning of Rule 21. There is no doubt that **some** of the attributes of the student-telegrapher position are the same as those involved in the usual work situation. The student was paid, he had to meet a regular schedule, etc. These attributes were of course known to the parties who drafted and executed the Student-Telegrapher Agreement. Yet the Agreement contained provisions which allowed an indefinite period of training (an obvious exception to the 60 day probationary period), and which expressly excepted the students **from** coverage by the Telegraphers Agreement until the training period was completed. These provisions reflect an obvious and plain intent of the parties to provide a special employment relationship for the student-telegrapher, one which contained certain attributes of regular employment but which still stopped far short of the usual and regular employment relationship. In these circumstances, only an express agreement between the parties could convert prior work as a student-telegrapher into "work" as such **term** is used in Rule 21 of the combined Agreement. We have no such retroactive agreement in the record before us. Accordingly, we must hold that claimant's tenure as a student-telegrapher did not constitute work under Rule 21 of the combined agreement and, hence, did not count against the 60 day probationary period specified in such rule. For a similar ruling, see Award 16139, First Division without referee, wherein time spent as a student brakeman was held not to be counted in the 60 day time limit for disapproving applications.

In view of the foregoing we shall deny the claim.

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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *EA Killen*
Executive Secretary

Dated at Chicago, Illinois, this **20th** day of **June 1973.**