

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22196  
Docket Number W-22204

Don Hamilton, Referee

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Illinois Central Gulf Railroad Company

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

(1) The Agreement was violated when, on April 22, 1976,  
Trackman T. E. Jones was summarily discharged without following the  
procedure stipulated within Agreement Rule 34 (System File K-90-T-761  
134-321-629 Case No. 1051 MofW).

(2) The Carrier shall restore Claimant T. E. Jones to service  
with all rights unimpaired and shall pay Claimant Jones for each day  
of work lost since April 22, 1976 plus any overtime worked by Foreman  
Wheeler's gang."

OPINION OF BOARD: Thomas E. Jones was employed as a Trackman  
March 22, 1976, He was terminated April 22, 1976.

The Carrier asserts that Jones was terminated under the  
provisions of Rule 3(d), which provides in part:

"The application of new employees shall be approved or  
disapproved within 60 days after the applicants begin  
work."

Therefore, it is the position of the Carrier that the application for  
employment by Thomas E. Jones was disapproved within 60 days after he  
began work. It is further the position of the Carrier that it has an  
absolute right to invoke the provisions of Rule 3(d) without written  
notice, investigation or justification. In other words, it is the  
position of the Carrier that the right to disapprove applications  
for employment within the first 60 days is unrestricted.

The Organization contends that the application was not dis-  
approved but rather that the Claimant was disciplined without the  
benefit of his rights pursuant to Rule 34. The Organization asserts  
that Claimant was not notified in writing that his application for  
employment was disapproved and, therefore, he was discharged without

an investigation under the provisions of Rule 34. The Organization asserts that the Carrier fired the Claimant and then looked for a reason to justify the termination. The Organization states that the Carrier did not give any thought to Rule 3(d) at the time the Claimant was fired, but merely utilized this rule as an afterthought to justify the termination **action**. The Organization insists that fundamental fairness requires the Carrier to advise the Claimant in writing as to why he was terminated.

The record in this case is not as complete as it might be in order for us to have a clear understanding of the events leading to the discharge of the Claimant. Perhaps the action of the Carrier could have been better **documented**, but for the purposes of this case it is sufficient to find that Rule 3(d) is absolute in nature and the authority which flows from it to the Carrier is unequivocal. The Carrier has the absolute right to disapprove the **application** for employment within 60 days after the applicant **commences** work. Provisions of Rule 34 are not applicable to the provisions of Rule 3(d). Therefore, the claim is denied.

**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;

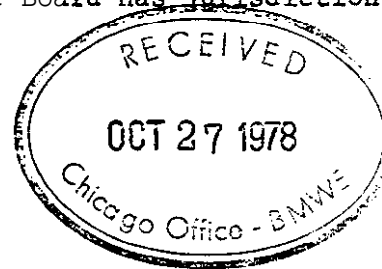
That the Carrier and the Employees involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway labor Act, as approved June 21, 1934;

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

That the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauline*  
Executive Secretary

Dated at Chicago, Illinois, this **13th** day of October **1978**.