

NATIONAL **RAILROAD** ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22687
Docket Number **MS-22573**

Joseph A. Sickles, **Referee**

PARTIES TO DISPUTE: (Raymond F. Boies
(**Maine** Central Railroad Company
(Portland **Terminal** Company

STATEMENT OF CLAIM: "This is to serve notice as required by the **Rules** of the National **Railroad Adjustment** Board of 'Mr. Boies' intention to file an **ex-parte** submission on August 22, 1978, covering his unadjusted dispute with the **Maine** Central **Railroad** Company.

The claim involved is whether Mr. Boies was terminated by the employer in violation of Article II, **Rule** 22(a) of the then current effective agreement between the Brotherhood of Maintenance of Way Employees and the **Maine** Central **Railroad** - Portland Terminal Company."

OPINION OF BOARD: Claimant was accepted for temporary employment on June 13, 1977, but he was terminated **on** July 27, 1977 for failing to show (on his employment application form) **two** recent arrests for driving while under the influence of liquor and one other **violation**.

Claim was submitted seeking reinstatement, because Article IF, **Rule** 22(a) provides that no **employee** "...who has worked more than thirty (30) consecutive work days..." shall be discharged without a hearing. Carrier points out that the **Employee** was hired as a "temporary **employee**" with government funds for a specific ballasting, rail laying and tie renewal project. Further, it asserts that because the Scope **Rule** specifically excludes temporary **employees**, **Rule** 22(a) is not applicable. Carrier points out that **Claimant** agreed, in writing, when making application, to accept "temporary **employment** pending approval of this application" and he understood that if it was not approved, his employment "may be terminated."

Limiting our consideration to the factual matters properly raised while the dispute was under review on the property, we are inclined to find that the Carrier's actions were not improper. A Carrier may dismiss an **employee** for falsification of an employment application, which was the case here. In a given case, it may be required to afford a hearing, but the Scope **Rule** in this **agreement** is

clear. It says that the rules do not **govern** "temporary **employees.**" Thus, a hearing was not required prior to the action of **termination.**

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:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.

