

The Carrier contends that in the handling of the dispute on the property no contention was made in the appeal procedure concerning Article XI, Section 2, of the Mediation Agreement of October 30, 1978, and, therefore, should not properly be considered by the Board. It is true that the issue was not raised in the appeal on the property; however, in the investigation Claimant's representative did make reference to such agreement. However, the Agreement referred to contains the language:

"... unless the information involved was of such a nature that the employee would not have been hired if the carrier had had timely knowledge of it."

The Carrier states that Claimant would not have been hired had it been informed of his conviction record.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral bearing;

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.

