

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24076
Docket Number CL-24063

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: **Claim** of the System Committee of the Brotherhood (GL-9406)
that:

1. Carrier violated the terms of the current Agreement, particularly Rules **13** and 21, when it foreclosed and/or terminated the employment of Ms. **Linda J. Wilson** on November **3, 1979** on the basis that her application for **employment** was not accepted, rather than afford her a fair and impartial investigation; and

2. Carrier shall now be required to reinstate **Ms. Linda J. Wilson** to service with **all rights unimpaired**, and compensate her for all losses **account improperly** denied of **work** opportunities, to include fringe benefits which would have accrued to her **continued employment**.

OPINION OF BOARD: The basic facts are not **in** dispute. The claimant initially began **employment** on August **3, 1979**. On November **3, 1979**, the claimant was disqualified from service and her **application** for employment was rejected. It is also noted that she was reinstated on March **17, 1981**.

The pertinent contract **language** Rule **13** and Rule 21(a). Rule **13** and Rule 21(a) are quoted below:

'Rule **No. 13** - Applications

The applications of new employees shall be approved or disapproved **within** sixty calendar days after the applicant starts work, **unless** investigation **develops complications** requiring longer time, and such additional **time** is mutually agreed to by the officer **in charge** of **Labor Relations** and the General Chairman. Applicants not so **notified at the expiration** of sixty calendar days will be considered accepted."

"Rule No. 21 - **Discipline** and Investigation

(a) An employee who has been **in** the service sixty calendar days or **more** or whose application has been formally approved, shall not be disciplined or dismissed without a fair and **impartial** investigation, and prior **thereto will** be notified **in** writing of the precise charge. At the **investigation** the employee, if he desires to

be represented, may be accompanied and represented by the 'duly accredited representative' as that term is defined in this agreement. He may, however be held out of service pending such investigation **in** which event he shall be **immediately** apprised in writing of the precise charge against him. The investigation shall be held within seven calendar days of the alleged offense or within seven calendar days of the date information concerning the alleged offense has reached his supervising officer. **In** cases where discipline is administered, a decision **in** writing, with copy to the duly accredited representative, will be rendered within seven calendar days after the completion of **investigation**. Investigations shall be held, whenever practicable, at the point of employment of the employee **involved** and at such **time** as **not** to cause the employee to lose rest or time. The Employee shall have reasonable opportunity to secure the presence of representatives and/or necessary witnesses. **Forty-eight** hours will, under ordinary circumstances, be considered reasonable **time**."

The Organization **contends** that **under** Rule **13**, the **claimant's** application was clearly accepted because she was not **notified** to the contrary during the sixty days subsequent to August **3, 1979**. **Moreover**, they note that there was no agreement with the General Chairman to extend the sixty day period. **Inasmuch** as her application was accepted, the carrier was obligated under Rule **21** to conduct an investigation before dismissing her. There is no **doubt in** the organization's **mind** that the carrier failed to conduct an investigation prior to the dismissal. **Inasmuch** as the carrier failed to conduct an investigation, the **dismissal** is **improper** and the **claimant is** entitled to **time** lost.

The carrier argues the **claimant's** application was properly rejected. It was the **intent** of the claimant's supervisor, Mr. Ricketts, to reject her **application** on October 1, **1979**, a date **within** the sixty days of August **3, 1979**. **However**, because she had been absent much of the probation period, he agreed with the local **committeeman**, Golubski, to **extend** the **probationary** period **30** or **60** days. **Inasmuch** as Mr. **Ricketts** was not **informed** by Mr. **Golubski** that Golubski did not have the authority to extend the probationary period, **the** carrier acted reasonably **in** good faith **in** reliance of what Mr. Ricketts thought to be a proper agreement. **The** carrier also argues that the **claim** for back pay should be mitigated due to the delays **in** the organization's response to a compromise offer made by the carrier **in** an attempt to settle the claim.

In considering the merits of the respective **arguments**, **the** **conclusion** of the Board is that the carrier violated Rule **21** and that the claimant was improperly discharged. Rule 21 requires that "employees who have been **in** service sixty days or **more** or whose application has been formally approved" will **not** be discharged without an investigation. It **is** clear under the unambiguous language in Rule **13** that **inasmuch** as the **claimant** had been in the service of **the** carrier **more** than sixty days and that she had not been notified at the expiration of sixty days that her application was rejected, her application should have been

considered "accepted". Once her application became accepted, as it did, the carrier was obligated to hold an **investigation** before dismissal, which they undisputably failed to do. Therefore, the claimant is entitled to all **time** lost.

The carrier defends its actions based on a reliance **agreement** to extend the **sixty** day probationary period. This agreement was **made** between Mr. Ricketts and a local union **official**. However, we do not find this defense persuasive. under the clear, unambiguous language of Rule **13**, the only extensions of the **probationary period** are those sanctioned by agreement of the officer **in** charge of **Labor** Relations, which Mr. Ricketts was not, and the General **Chairman, which Golubski was** not. The language of Rule **13** is clear and not subject to interpretation and must be applied as written.

Regarding the issue of unreasonable delay, the Board finds that the delay in this case **cannot** operate to mitigate the damages. While the delay is bothersome, there is no evidence it **was** deliberate or intentional. **The** wording of **the** first offer of compromise extended by the carrier did not request any advice of rejection and, as a **matter** of fact, implied clearly that the offer was a take-it or leave-it matter. It stated "if **you** concur with this disposition, please indicate so by **signing** and returning one copy of this letter. If you do not agree, your claim **is** again denied for lack of support of scheduled rules and agreements." The compromise offer, as extended by the carrier, was **in** fact not acceptable to the organization, **and** they proceeded to appeal the case to the Board within the specified time limit based on the **belief** that the claim was being denied by the carrier. Nor is there any evidence **in** the record that the carrier sought out advice from the **union** as to the acceptance or rejection of their offer during the period of delay. **Under** the wording of the carrier's offer, the carrier should have assumed that the absence of an acceptance was clearly a rejection of the **compromise** as it was in this case. **Under** the **circumstances**, the organization did not act unreasonably.

In **summary**, it is the finding of the Board that contract was violated and the claimant is entitled to back pay per Rule 21(c).

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 violated.

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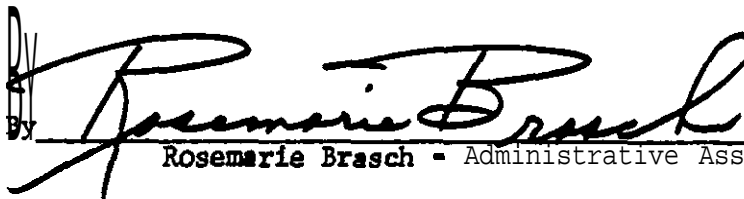
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A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of December 1982.



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-9406)
that:

1. Carrier violated the terms of the current Agreement, particularly Rules 13 and 21, when it foreclosed and/or terminated the employment of **Ms.** Linda J. Wilson on November 3, 1979 on the basis that her application for employment was not accepted, rather than afford her a fair and impartial investigation; and

2. Carrier shall **now** be required to reinstate Ms. Linda J. Wilson to service with all rights unimpaired, and compensate her for all losses account **improperly** denied of **work** opportunities, to include fringe benefits which would have accrued to her continued 'employment.

OPINION OF BOARD: The basic facts are not in dispute. The claimant initially began **employment** on August 3, 1979. On November 3, 1979, the claimant was disqualified from service and her application for employment was rejected. It is also noted that she was reinstated on March 17, 1981.

The pertinent contract language Rule 13 and Rule 21(a). Rule 13 and Rule 21(a) are quoted below:

"Rule No. 13 - Applications

The applications of new employees shall be approved or disapproved within sixty calendar days after the applicant starts work, unless investigation develops complications requiring longer time, and such additional time is mutually agreed to by the officer in charge of Labor Relations and the General Chairman. **Applicants** not so notified at ~~the~~ expiration of sixty calendar days will be considered accepted."

"Rule No. 21 - Discipline and Investigation

(a) An employee who has been in the service sixty calendar days or **more** or whose application has been **formally** approved, shall not be disciplined or dismissed without a fair and impartial investigation, and prior thereto will be notified in writing of the precise charge. At the investigation the employee, if he desires to

be represented, may be accompanied and represented by the 'duly accredited representative' as that term **is defined** in this **agreement**. He may, **however** be held out of service pending such investigation in which event he shall be **immediately** apprised in writing of the precise charge against him. **The** investigation shall be held within seven calendar days of the alleged offense or within seven calendar days of the **date** information concerning the alleged offense has reached his supervising officer. In cases where discipline is administered, a decision in writing, **with** copy to the duly accredited representative, will be rendered within seven calendar days after the completion of investigation. Investigations shall be held, whenever practicable, at the point of employment of the employee **involved** and at such time as not to **cause** the **employee** to lose rest or time. The Employee shall have reasonable opportunity to secure the presence of representatives and/or necessary witnesses. **Forty-eight** hours will, under ordinary **circumstances**, be considered reasonable time."

The Organization contends that under Rule **13**, the **claimant's** application was clearly accepted because she was not notified to the contrary during the sixty days subsequent to August **3**, 1979. **Moreover**, they note that there was no agreement with the General Chairman to extend the sixty day period. Inasmuch as her application was accepted, the carrier was obligated under Rule 21 to conduct an investigation before dismissing her. There is no doubt in the organization's mind that the carrier failed to conduct an investigation prior to the dismissal. Inasmuch as the carrier failed to conduct an **investigation**, the dismissal is improper and the **claimant** is **entitled** to time lost.

The carrier argues the claimant's application was properly rejected. It was the intent of the **claimant's** supervisor, Mr. Ricketts, to reject her application on October 1, 1979, a date within the **sixty** days of August **3**, 1979. However, because she had been absent much of the probation period, he agreed with the local **committeeman**, Golubski, to extend the probationary period **30 or 60** days. Inasmuch as Mr. Ricketts was not informed by Mr. Golubski that Golubski did -not have the authority to extend the probationary period, the carrier acted reasonably in good faith in reliance of what Mr. **Ricketts** thought to be a proper agreement. The carrier also argues that the **claim for** back pay should be mitigated due to the delays in the organization's response to a compromise offer made by the carrier in an attempt to settle the claim.

X-1
In considering the merits of the respective **arguments**, the conclusion of the Board is that the carrier violated Rule 21 and that the claimant was improperly discharged. Rule 21 requires that "employees who have been in service sixty days or more or whose application has been formally approved" will **not** be discharged without an investigation. It is clear under the **unambiguous** language in Rule **13** that inasmuch as the claimant had been in the service of **the** carrier **more** than sixty days and that she had not been notified at the expiration of sixty days that her application was rejected, 'her application should have been

X-1 considered "accepted". Once her application became accepted, as it did, the carrier was obligated to hold an investigation before dismissal, which they undisputably failed to do. Therefore, the claimant is entitled to all time lost.

The carrier defends its actions based on a reliance agreement to extend the sixty day probationary period. **This** agreement was made between Mr. Ricketts and a local union official. However, we do not find this defense persuasive. Under the clear, unambiguous language of Rule 13, the only extensions of the probationary period are those sanctioned by agreement of the officer in charge of Labor Relations, which **Mr.** Ricketts was not, and the General Chairman, which **Golubski** was not. The language of Rule 13 is clear and not subject to interpretation and must be applied as written.

X-2 Regarding the issue of unreasonable delay, the Board finds that the delay in this case cannot operate to mitigate the damages. While the delay is bothersome, there is no evidence it was deliberate or intentional. The wording of the first offer of **compromise** extended by the carrier did not request any advice of rejection and, as a matter of fact, implied clearly that the offer was a take-it or leave-it matter. It stated "if you concur with this disposition, please indicate so by signing and returning one copy of this letter. If you do not agree, your claim is again denied for lack of support of scheduled rules and agreements." The compromise offer, as extended by the carrier, was in fact not acceptable to the organization, **and** they proceeded to appeal the case to the Board within the specified **time** limit based on the belief that the claim was being denied by the carrier. Nor is there any evidence in the record that the carrier sought out advice from the union as to the acceptance or rejection of their offer during the period of delay. **Under** the wording of the carrier's offer, the carrier should have assumed that the absence of an acceptance was clearly a rejection of the compromise as it was in this case. **Under** the circumstances, the organization did not act unreasonably.

In **summary**, it is the finding of the Board that contract was violated and the claimant is entitled to back pay per Rule 21(c).

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 violated.

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Claim sustained to the extent indicated in the Opinion.

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 14th day of December 1982.

