

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24822
Docket Number MW-24456

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it improperly disapproved Mr. R.E. Watson's application for employment and closed his service record (System File 5-R-210-14/11-120-4).

(2) Mr. R. E. Watson shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered beginning May 1, 1980.

OPINION OF BOARD: The facts of record in this dispute are not controverted by the parties. Rather, both the Organization and the Carrier acknowledge the Claimant worked and was paid for February 27 and 28, 1980 at the trackman's rate of pay. Claimant was not compensated for February 29, 1980 and did not work again until March 3, 1980. There is also agreement that the Claimant's last day worked was May 1, 1980. Moreover, that Claimant's application for employment was rejected by the Carrier on May 1, 1980, and that Claimant was so notified in a letter from Carrier's Superintendent Duncan.

The Organization's position can be summarized as follows: They allege Claimant worked for and was compensated by the Carrier for February 27 and 28, 1980, and, thus, established his seniority as of that date. Proceeding from the February 27 seniority date, the Organization argues that the Carrier's May 1 letter rejecting the Claimant's application for employment was improper as it came after the 60 day time limit established by Article XI, Section 1 of the October 30, 1978 Fraternal Mediation Agreement. In contrast, the Carrier contends that Claimant's application for employment was properly rejected within the 60 day time limit.

The Carrier asserts the Claimant was properly assigned a seniority date of March 3, 1980, in accordance with its usual and customary practice.

The Claimant participated in a pre-hire selection and screening process conducted by the Carrier for potential new employees. The Carrier uses this orientation program to test the skills and determine the suitability for employment of prospective trackmen. Carrier contends that enrollment in the orientation program did not constitute acceptance of employment, nor did it establish a seniority date for this Claimant or any other prospective trackman who may have participated in the program.

This Board is inclined to agree with the Carrier's interpretation of the establishment of seniority. This orientation program was designed by the Carrier to simulate a typical work environment in order to facilitate the evaluation of potential employees. The program did not serve to elevate prospective trackmen to a specific class or craft within the usual meaning of those terms in the railroad

industry. The fact that the Claimant was paid for participating in an orientation program did not, in and of itself, initiate a permanent contractual relationship between Claimant and Carrier. Rather, this Board finds that Claimant's reporting for duty on March 3, 1980, after completion of the orientation classes must be considered his first day of employment and date of hire, thus establishing his seniority date.

The Board having answered the critical question of when seniority was established, March 3, 1980, now considers Carrier's disapproval of Claimant's employment application.

The Mediation Agreement of October 30, 1978, Article XI, Section 1, contains the following language:

"Application for employment will be rejected within sixty (60) calendar days after seniority date is established, or applicant shall be considered accepted. Applications rejected by the Carrier must be declined in writing to the applicant."

Clearly, the Carrier's letter of May 1 notifying the Claimant that his application for employment was disapproved fell within the time limits imposed by Article XI. The Carrier's rejection of the Claimant's employment application was proper and timely. Therefore, we must deny his 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

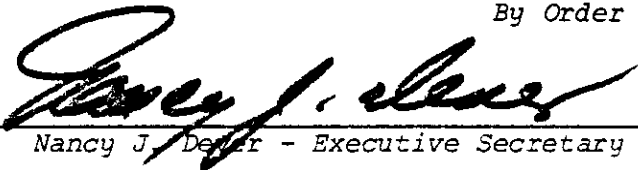
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984