

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29323
Docket No. MS-28777
92-3-89-3-220

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Annette Amir
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

"Was I wrongfully discharged on the 104th day of work for Amtrak?
(i.e., was my 'probation' over?)"

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This case comes to the Board as an Ex-Parte Submission from one Annette Amir which was filed on or about May 15, 1989. Claimant contends that she was wrongfully discharged by the Carrier on her 104th day of service.

Claimant alleges that she was hired by the Carrier on March 18, 1988, as a Train Attendant. She subsequently trained and retrained for the position of Service Attendant. She alleges that her work began on board a train on April 20, 1988.

The Claimant contends that on June 13, 1988, after completing a trip to New Orleans, she was experiencing a pain in her left buttock area. She was treated by her doctor and later sent to the Carrier doctor.

Claimant contends that she was terminated on June 29, 1988, because she did not report her injury immediately.

The Claimant argues that she was hired on March 18, 1988. She argues that under Rule 28, the 90-day calendar period began on that date. The Claimant contends that she was therefore an employee for 104 days before she was terminated, despite the fact that she was trained during part of that time, and consequently had been approved and could not be terminated. She submits a letter dated March 18, 1988, from the Division Manager as her proof that she was hired on that date and, therefore, her period of employment should be treated as having begun that day.

The Carrier contends that although Claimant was hired as a Service Attendant on March 18, 1988, her initial employment began with the standard training program for newly hired on-board service employees. She was subsequently trained, and the Carrier takes the position that her first day of work was April 20, 1988, when she began her first work assignment. The Carrier contends that she did not perform work as defined by Rule 28 during the training period. The Carrier points to Public Law Board No. 4400, Award 1, in which that Board held, in relevant part, as follows:

"...the Organization points out that there are a number of claims following the one in this case which will turn upon the question of whether days spent in training are included among 'working days' for purposes of Rules 28 and 19(a). The parties have asked this Board to resolve that issue for purposes of future claims.

Again we find the holding of Award No. 176 of Public Law Board 3103 determinative with respect to the question. Time spent in training is not time spent in job performance. Inasmuch as the language 'working days' contemplates days actually worked in the performance of on job duties, it follows that time spent in training does not count toward the period for purposes of Rules 28 and 19(a)."

(Emphasis added)

This Board has reviewed the record and we find that there is insufficient evidence that the Claimant was wrongfully discharged after she had completed her probationary period. We find that the Claimant's employment application was properly disapproved in accordance with Rule 28. Training is not the same as work or service and the 90 calendar day probationary period begins when the individual first performs work. The Claimant's application for employment was therefore disapproved within the 90-day probationary period. Therefore, the claim will be denied.

A W A R D


Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deven - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.