

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32731
Docket No. SG-33766
98-3-97-3-222

The Third Division consisted of the regular members and in addition Referee James E. Yost when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Claim on behalf of M. Allen to be returned to service and made whole for all time lost as a result of his dismissal from service effective January 17, 1996, account Carrier violated the current Signalmen's Agreement, particularly Rule 55, when it removed the Claimant from service without providing him with a fair and impartial investigation. Carrier also violated Rule 54 when it failed to provide notice of the disallowance of the claim within the time limits. Carrier's File No. 15(96-123). General Chairman's File No. 96-SYS-02. BRS File Case No. 10065-L&N."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant entered service on November 27, 1995, as an Assistant Signaller and was placed in training with several different gangs. On January 18, 1996, Carrier advised Claimant that his application for employment was rejected terminating his employment.

It is the position of the Organization that Claimant was improperly terminated in violation of Rule 55 which provides that an employee who has been in service more than 30 days will not be disciplined or dismissed without an Investigation.

Carrier counters that the provisions of Section II, 1 of the Training Program Agreement for New Signal Employees reading:

"1. On or after March 1, 1975 applicants will be employed as assistants. The Carrier may, at any time during the first sixty calendar days, reject an application for employment and remove the employee from service. An assistant retained in the service following the sixty (60) day probationary period will be required to enter the training program and comply with the provisions pertaining thereto as hereinafter outlined."

is controlling and not Rule 55.

The Organization also asserts that the claim should be sustained as presented account Carrier violated the Time Limit Rule, Rule 54, when it failed to respond to the Organization's initial claim within 60 days. Carrier responds that because Claimant was terminated under the provisions of Section II, 1 of the Training Program Agreement he was not an employee subject to the Time Limit on Claims Rule.

Normally, the Board would make a decision on the asserted time limit violation before considering the merits, but in this case we find it necessary to determine whether in fact Claimant had a permanent employee status prior to the claim being filed on his behalf.

On merits, we are convinced that Carrier was not required to apply the provisions of Rule 55 to Claimant. This is so for the reason that Section II, 1 of the Training Program Agreement is a special agreement that specifically covers new Signal employees employed as assistants. It takes precedence over the general rules of the Agreement and gives the Carrier the unrestricted right to reject an application for employment and remove the employee from service during the first 60 days of

employment without the necessity of a formal Investigation. We would also note that Rule 55 is a discipline Rule and the record before the Board does not reveal that Claimant was ever disciplined.

Claimant, having been terminated from Carrier's employment on the 58th day of his 60 day probationary period, had no permanent employment status prior to the filing of a claim on his behalf, and because he did not, we conclude that the Time Limit Rule has no application to the claim filed on his behalf.

On point is Third Division Award 19117, wherein the Board held:

"The rejection of Claimant's employment application was within the prerogative of the Carrier and since Claimant did not have permanent employee status prior to the filing a claim in his behalf, we find the Time Limit Rule has no application to the appeal on his behalf to the Chief Engineer."

See also Third Division Awards 3152 and 3520.

There being no basis for a sustaining award, the claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of August 1998.