

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

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

Bettie L. MacGregor, Clerk, Office of Supervisor of Equipment Expenditures, Seniority District, Philadelphia, Pennsylvania, be returned to service with all rights unimpaired and be compensated for all monetary loss sustained dating from March 21, 1956, until adjusted. (Docket 116)

OPINION OF BOARD: Pursuant to her application for employment, Claimant Bettie L. MacGregor entered Carrier's service on December 22, 1955, being assigned as Key Punch Operator in the Office of Supervisor-Equipment Expenditures. Rule 5-B-1 states:

"The application of new employes for employment shall be approved or disapproved within ninety days after applicants begin work.

"In the event of applicants giving false information this rule (5-B-1) shall not apply."

The question of false information aside, the meaning of this rule is that a new employe is on a probationary status during the first ninety days, and that he may be discharged within that period without recourse under the Agreement. The issue here is whether Claimant was separated from the service within this ninety-day probationary period, within the meaning of Rule 5-B-1, or whether Carrier did not take action until after this period had expired—in which case Rule 6-A-1(a) (requiring a fair and impartial trial in cases of dismissal) would become operative.

The evidence shows that discussions were had between Claimant and the Carrier regarding the quality of her work, and that finally on March 19, 1956, (the eighty-ninth day of her employment) Carrier orally advised her

that she was being dropped from the service as of that day. Carrier states, but Organization denies, that Claimant was told on March 19 that her "application for employment had been disapproved." Even if these exact words were not used, however, it would be only a distinction without a difference. Advising an employee during her probationary period that she is being terminated is tantamount to stating her application for employment is disapproved. There is no requirement under Rule 5-B-1 that this notice be in writing.

We conclude, therefore, that Carrier acted within the scope of Rule 5-B-1 and that Rule 6-A-1(a) did not become operative. A denial award is warranted.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1958.