

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22196  
Docket Number MW-22204

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Illinois Central Gulf Railroad Company

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

(1) The Agreement was violated when, on April 22, 1976, Trackman T. E. Jones was summarily discharged without following the procedure stipulated within Agreement Rule 34 (System File K-90-T-76/134-321-629 Case No. 1051 MofW).

(2) The Carrier shall restore Claimant T. E. Jones to service with all rights unimpaired and shall pay Claimant Jones for each day of work lost since April 22, 1976 plus any overtime worked by Foreman Wheeler's gang."

OPINION OF BOARD: Thomas E. Jones was employed as a Trackman  
March 22, 1976. He was terminated April 22, 1976.

The Carrier asserts that Jones was terminated under the provisions of Rule 3(d), which provides in part:

"The application of new employees shall be approved or disapproved within 60 days after the applicants begin work."

Therefore, it is the position of the Carrier that the application for employment by Thomas E. Jones was disapproved within 60 days after he began work. It is further the position of the Carrier that it has an absolute right to invoke the provisions of Rule 3(d) without written notice, investigation or justification. In other words, it is the position of the Carrier that the right to disapprove applications for employment within the first 60 days is unrestricted.

The Organization contends that the application was not disapproved but rather that the Claimant was disciplined without the benefit of his rights pursuant to Rule 34. The Organization asserts that Claimant was not notified in writing that his application for employment was disapproved and, therefore, he was discharged without

an investigation under the provisions of Rule 34. The Organization asserts that the Carrier fired the Claimant and then looked for a reason to justify the termination. The Organization states that the Carrier did not give any thought to Rule 3(d) at the time the Claimant was fired, but merely utilized this rule as an afterthought to justify the termination action. The Organization insists that fundamental fairness requires the Carrier to advise the Claimant in writing as to why he was terminated.

The record in this case is not as complete as it might be in order for us to have a clear understanding of the events leading to the discharge of the Claimant. Perhaps the action of the Carrier could have been better documented, but for the purposes of this case it is sufficient to find that Rule 3(d) is absolute in nature and the authority which flows from it to the Carrier is unequivocal. The Carrier has the absolute right to disapprove the application for employment within 60 days after the applicant commences work. Provisions of Rule 34 are not applicable to the provisions of Rule 3(d). Therefore, the claim is denied.

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 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 Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October 1978.