

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22687
Docket Number MS-22573

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Raymond F. Boies
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(Maine Central Railroad Company
(Portland Terminal Company

STATEMENT OF CLAIM: "This is to serve notice as required by the Rules of the National Railroad Adjustment Board of Mr. Boies' intention to file an ex-parte submission on August 22, 1978, covering his unadjusted dispute with the Maine Central Railroad Company.

The claim involved is whether Mr. Boies was terminated by the employer in violation of Article II, Rule 22(a) of the then current effective agreement between the Brotherhood of Maintenance of Way Employees and the Maine Central Railroad - Portland Terminal Company."

OPINION OF BOARD: Claimant was accepted for temporary employment on June 13, 1977, but he was terminated on July 27, 1977 for failing to show (on his employment application form) two recent arrests for driving while under the influence of liquor and one other violation.

Claim was submitted seeking reinstatement, because Article IV, Rule 22(a) provides that no employee "...who has worked more than thirty (30) consecutive work days..." shall be discharged without a hearing. Carrier points out that the Employee was hired as a "temporary employee" with government funds for a specific ballasting, rail laying and tie renewal project. Further, it asserts that because the Scope Rule specifically excludes temporary employees, Rule 22(a) is not applicable. Carrier points out that Claimant agreed, in writing, when making application, to accept "temporary employment pending approval of this application" and he understood that if it was not approved, his employment "may be terminated."

Limiting our consideration to the factual matters properly raised while the dispute was under review on the property, we are inclined to find that the Carrier's actions were not improper. A Carrier may dismiss an employee for falsification of an employment application, which was the case here. In a given case, it may be required to afford a hearing, but the Scope Rule in this agreement is

clear. It says that the rules do not govern "temporary employees."
Thus, a hearing was not required prior to the action of termination.

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: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.

