

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24823
Docket Number MS-24461

Edward M. Hogan, Referee

(Ralph E. Hines
PARTIES TO DISPUTE: (
(Atchison, Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of Ralph E. Hines that:

(a) Carrier violated and continues to violate the rules of the Current Clerks' Agreement at El Paso, Texas, commencing on January 15, 1980, when Ralph E. Hines was removed from service without cause, and

(b) Ralph E. Hines shall be permitted to return to service and shall be compensated all earnings he would have received, commencing January 15, 1980, including interest payable at the prevailing rate covering such loss and continuing so long as he is wrongfully deprived of employment, and full seniority and other benefits attendant to his service be restored to him.

OPINION OF BOARD: Claimant began his service with the instant Carrier in October, 1979. Excluding three years of service in the Armed Forces, the Claimant had been employed by another Carrier for approximately thirty years. For eight years prior to October, 1979, the Claimant was self-employed in his own business. Subsequent to Claimant's initial employment with the Carrier in October, 1979, the Claimant's initial probationary period had extended according to the terms of the controlling Agreement. On January 15, 1980, the Claimant was advised by the Carrier's representative that this application for permanent employment had been disapproved and that he was no longer in the service of the Carrier.

The Claimant contends that numerous portions of the controlling Agreement have been violated; to-wit, Rule 47.

The Carrier contends that the instant claim is barred by provisions of Rule 47-a(1) of the controlling Agreement which prescribes the time limits in which claims and/or grievances must be progressed. The Carrier further argues that the action taken with respect to the instant Claimant was fully permitted under Rule 10 of the controlling Agreement which states, in pertinent part:

"The application of a new employee shall be approved or disapproved within 60 days after the applicant established seniority, unless a longer time is mutually agreed to by the Carrier and the representative of the employees. However, this will not prevent formal action being taken under the provisions of Rule 24, if, subsequent to the expiration of 60 days, it develops that information given by him in his application was false."

This Board agrees with both positions of the Carrier. First, we do not believe that employee is entitled to grieve the denial of his application for employment during the probationary period, as amended, stated in and pursuant to the controlling Agreement. Secondly, we agree with the position of the Carrier that the instant claim before us has been improperly filed under the terms of the

Agreement. (See Third Division Awards 15334, 20063, 19070, 18553, 18371, and 12490.) This Board cannot extend the substantive terms of an agreement binding upon the employees and carrier, such agreement being negotiated in good faith and ratified by the appropriate bodies and/or parties.

In short, this Board holds that the instant claim was not properly and timely appealed on the property pursuant to Rule 47 of the controlling Agreement, that the Claimant was a probationary employee and had no recourse under Rule 10-A of the controlling agreement, that the probationary period had been mutually extended by the Carrier and the duly authorized representative of the employees, that the Claimant's application had been disapproved during the extended probationary period, and that this discipline, as conceived under the terms of the controlling Agreement, was not involved in this dispute.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984