Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 42590
Docket No. MW-42664
17-3-NRAB-00003-140363

The Third Division consisted of the regular members and in addition Referee Robert A. Grey when award was rendered.

PARTIES TO DISPUTE: **(Brotherhood of Maintenance of Way Employes Division -**
(IBT Rail Conference
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(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, by letter dated April 12, 2013, it disapproved Claimant G. Bishop's application beyond the time it was allowed to do so and denied him his right to a fair and impartial hearing (Carrier's File MW-13-13).

(2) As a consequence of the violation referred to in Part (1) above, we request that Claimant G. Bishop be compensated for all wage and benefit loss suffered as a result of the Carrier's violation of the Agreement."

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.

The parties agree this claim hinges on the Board's interpretation of the phrase "work days" as it appears in Agreement Article 11.1, entitled "Probationary Period of Employment." Article 11.1 states in pertinent part: "The application for employment of a new employee will be approved or disapproved within a probationary period of sixty (60) work days following the day the employee first performs service for the Carrier."

In the parties' prior Agreement (2003), Article 11.1 used the term "calendar days." During negotiations for the 2010 Agreement (the Agreement applicable to this 2013 claim), the Carrier sought, and obtained, the change from "calendar days" to "work days" in Article 11.1.

The Organization argues that "work days" in Article 11.1 logically means days on which "there was work being performed within the Engineering Department during regularly assigned hours during the Carrier's normal course of business," regardless of whether the probationary employee actually worked on those days. In the Organization's view, the 60-day probationary period continues to run on all such "work days," including those on which the probationary employee is furloughed.

The Carrier argues that "work days" in Article 11.1 means days that the probationary employee actually worked, such that they could be observed by Carrier supervisors for 60 days of actual work, in order to determine suitability for continued employment beyond the probationary period. The Carrier argues that it sought the change because probationary employees are the first to be, and often are, furloughed and/or bumped within mere calendar days of being hired, thus making it difficult or impossible for Carrier supervisors to sufficiently observe and evaluate probationary employees within 60 calendar days of their hire date. The Carrier avers that the Organization was well aware of the purpose of the change during contract negotiations, and argues that the Organization's proposed definition of "work days" is essentially the same as "calendar days" in this context, and would thus render the negotiated language change meaningless.

The Board carefully reviewed the record and the parties' respective arguments, and is persuaded that the collectively negotiated change from "calendar days" to "work days" means days actually worked by the probationary employee.

The Board is not persuaded by the Organization's comparison of Article 11's "work days" pertaining to calculation of probationary periods, with Article 18's days of "compensated service" pertaining to qualification for annual vacation.

It is undisputed that the Claimant had fewer than 60 Article 11.1 "work days" at the time the Carrier disapproved his employment application. The Carrier did so in accordance with Article 11.1, which includes: "An application that is rejected within such period will result in termination of the employee's relationship with the Carrier without disciplinary procedures." Therefore, the Claimant was not entitled to an Article 26 impartial disciplinary hearing.

Thus, the Carrier was not in violation.

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 April 2017.