

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42591
Docket No. MW-42665
17-3-NRAB-00003-140364**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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 January 17, 2013, it disapproved Claimant J. Sheets’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-13-12).**
- (2) As a consequence of the violation referred to in Part (1) above, we request that Claimant J. Sheets 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.

Article 11 of the parties' Agreement states:

"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. An application that is rejected within such period will result in termination of the employee's relationship with the Carrier without disciplinary procedures. In the event an employee's application for employment is disapproved in accordance with the provisions of this rule, notification in writing of such disapproval will be made by the Carrier."

The Organization argues that the Carrier failed to notify Claimant of the disapproval of his employment application, in writing, within the above-quoted 60 day period; that neither the Claimant nor the Organization ever received the Carrier's alleged January 17, 2013 Article 11 written notification of disapproval of the Claimant's employment application; that despite the "cc" to the General Chairman in said alleged written notification, the General Chairman never received same in the mail from the Carrier; that Article 11 and the ST/BMWE Agreement were not applicable to the Claimant; and that based on the above, the Claimant is entitled to an Article 26 impartial disciplinary hearing and to the granting of his claim.

The Carrier argues that it disapproved Claimant's application for employment within Article 11's 60-day period for Carrier to do so; that there is no requirement for the Carrier to send an Article 11 notification via certified mail, though in this case it did so, and the record contains proof of delivery; that because the Claimant was a probationary employee when his employment application was disapproved, the Carrier had no obligation to notify the Organization; that the ST/BMWE Agreement is applicable to this claim and to the underlying facts and events; that the Organization's claim is untimely; and the Claimant had no right to an Article 26 impartial disciplinary hearing.

Article 11 contains a time limit by which the Carrier must make its decision on an employment application. It does not contain a time limit by which the Carrier must send its written notification. It does not contain a mandated method by which the Carrier is to send its written notification, nor does it state to whom it must be sent. Therefore, the Board finds that Article 11 does not require the Carrier to use certified mail, nor does it require the Carrier to send written notification of termination of a probationary employee to the Organization. The Board finds no reason to doubt the

General Chairman's statement in the record that he never received a copy of the notification in the mail from the Carrier, despite the notification letter indicating that it was "cc'd" by the Carrier to the General Chairman. Moreover, the Board notes that the Carrier acknowledges that repeated changeover of the Carrier's Personnel Officer position resulted in inconsistencies in the manner by which probationary period Article 11 application rejection letters were mailed-out by the Carrier. Although Article 11 does not require the Carrier to use certified mail, in this case the Carrier did use certified mail to send its Article 11 written notice to the Claimant. The record contains US Postal Service tracking and delivery documentation of same.

In on-property Third Division Award 42590 between the parties at bar, the Board determined that "work days" in Article 11 means days actually worked by the probationary employee. In the claim at hand, the Claimant had fewer than 60 Article 11 "work days" at the time the Carrier disapproved his employment application. Therefore, the Board finds sufficient probative evidence in the record proving that the Carrier sent written notification to the Claimant in accordance with its obligations under Article 11. Said Article includes that: "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.

The Board is not persuaded by the Organization's unsupported assertion that Claimant's work in the Mechanical Department while furloughed from the Engineering Department somehow rendered the ST/BMWE Agreement, including Article 11, inapplicable to this Claimant's probationary employment. The Board notes that Claimant began service to the Carrier on October 22, 2012; worked in the Engineering Department until furloughed on December 17, 2012; worked in the Mechanical Department as a Laborer from December 17, 2012 until furloughed on January 3, 2013; and remained on furlough, with fewer than 60 Article 11 "work days" of employment with Carrier to his credit, when the Carrier disapproved his employment application by letter dated January 17, 2013, delivered on January 19, 2013.

In view of the entire record, the Board finds that the Carrier complied with the requirements of Article 11. 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.