

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42592
Docket No. MW-42666
17-3-NRAB-00003-140365**

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 it failed to notify Claimant B. Obert in writing that his application was being rejected (Carrier’s File MW-13-22).**
- (2) As a consequence of the violation referred to in Part (1) above, we request that Claimant B. Obert 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 Organization’s procedural arguments are not persuasive.

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 probationary period; that oral notification to the Claimant by a non-supervisory employee (who was an Organization member) does not comply with Article 11 and was therefore a nullity; that the Carrier has previously sometimes sent its Article 11 written notifications by certified mail, and has previously sometimes sent a copy to the Organization; that the Carrier failed to send its alleged Article 11 written notification via certified mail; that neither the Claimant nor the Organization ever received the Carrier's alleged Article 11 written notification; 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 Article 11's 60-day probationary period applies to the Carrier's time to make the employment decision, not the time by which the Carrier must send written notification thereof; that in any event, the Claimant was informed by Carrier supervision orally within said time period; that there is no requirement for the Carrier to send an Article 11 notification via certified mail, nor to send a copy to the Organization; that repeated recent changeover in the Carrier's Personnel Officer position resulted in inconsistencies in the manner by which probationary period Article 11 rejection letters were mailed (acknowledging that sometime letters were sent via certified mail, sometimes not, and that sometimes copies were provided to the Organization, sometimes not), but that this did not alter the terms of Article 11 or create a practice; that the Carrier provided sufficient evidence to prove it mailed its Article 11 notification to the Claimant; and that pursuant to Article 11, the Claimant had no right to an Article 26 impartial disciplinary hearing.

The Claimant was a probationary employee hired by the Carrier on July 1, 2013. The record establishes that on August 30, 2013, within the 60 day period, Personnel Officer Evans notified the Claimant during their telephone conversation that Claimant's employment application was disapproved. This is not negated by the fact that on the same

day a Carrier supervisor instructed an employee (an Organization member) to retrieve Claimant's PPE gear - whether or not the Claimant and the employee retrieving Claimant's PPE gear discussed the Claimant's employment status.

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 binding past practices to the contrary. 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.

Article 11 states: "An application that is rejected within such period will result in termination of the employee's relationship with the Carrier without disciplinary procedures." Therefore, Claimant was not entitled to an Article 26 impartial disciplinary hearing.

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.