

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 6946
Docket No. 6805
2-B&O-MA-'75

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (International Association of Machinists and
Aerospace Workers
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(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the Controlling Agreement, the Baltimore and Ohio Railroad Company, damaged Equipment Repairman (Machinist) John M. Reilly, of the Akron Division, when they disqualified him in the Maintenance of Way Department, Akron Division.
2. That accordingly the Carrier be ordered to compensate Machinist Reilly for all wage loss from the date of April 25, 1973, until restored to service in the Maintenance of Way Department, on the Akron Division (Akron Junction Shop), Vacation rights and coverage under Health and Welfare Benefits under Policy GA-23000.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Claimant Equipment Repairman J. M. Reilly, with a service date of June 8, 1942, with the Carrier, completed his apprenticeship in the Machinists Craft in the Carrier's shops. He was later assigned to the position of Working Foreman at the Dover Shops, until that position's abolishment and was ultimately assigned to the position of Machinist at the Akron Junction Shop in the Maintenance of Equipment Department, until furloughed in 1971. During the period from 1971 to 1973 he was called at various times to fill the position of Working Foreman at the Akron Junction Shop. During the month of February 1973 a position was advertised in the Maintenance of Way Department at Akron Junction, and after some discussion as to whether the Claimant or a furloughed Repairman from the Newark Division was entitled to the position, the Claimant was assigned the position. On April 23, 1973, after 28 days on the position, the Claimant was advised that he was disqualified from the position; and the position was readvertised and then assigned to the furloughed Equipment Repairman from the Newark Division.

The Organization contends that the Claimant, a man with thirty-one years of service who has never been reprimanded for inability to perform work in the Maintenance of Equipment Department as a Machinist, was arbitrarily and without just cause disqualified from the position; and, that the Carrier officials had no intention of retaining Claimant, but wanted to get the man of their choice from the Newark Division.

The Carrier contends that the Claimant was clearly not qualified to perform the work of an equipment Repairman based on an interview with Mr. H. R. Clark, and the close observation of his work by H. R. Clark and R. W. Burtch. The Carrier also contends that there is considerable difference in the job requirements for Machinists working on Diesel Locomotives as compared with M of W Equipment. On February 19, 1974, the Carrier made an offer to have an on-the-job evaluation of the Claimant made with the General Chairman and a representative of the Carrier present to fully observe the qualifications of the Claimant. This offer was rejected.

Rule 15 states in pertinent part:

"...An employee exercising his seniority rights for, or assigned account of application, to a vacancy under this rule will lose his rights to the job he left. If after fair trial he fails to qualify for the new position, he will have to take whatever position may be open in his craft."

We find that the issue before us is whether or not the Claimant was given a "fair trial" to qualify for the position of Equipment Repairman in the Maintenance of Way Department.

As pointed out above the Carrier contends (Carrier's Exhibit "D") that during the trial period close observation was made of Claimant's performance by H. R. Clark and R. W. Burtch. The record before us does not give any indication whatsoever as to what Mr. Clark observed. The Organization contends, and it is not denied, that Mr. Clark was in the shop only once during the 28-day period, that being the day on which the Claimant was employed. Mr. Clark interviewed the Claimant on that day and from the entirety of the record the interview could not serve to disqualify the Claimant.

On April 2, 1973, R. W. Burtch wrote as follows:

"Mr. J. M. Reilly

You are hereby disqualified for the position of
Equipment Repairman.

R. W. Burtch"

On February 7, 1974, Mr. R. W. Burtch wrote to Mr. Schilt concerning his observations of Mr. Reilly during the period of March 26 to April 23, 1973, as follows:

"Mr. F. M. Schilt:

My observations of Mr. Reilly while he was working as an equipment repairman was that he showed no initiative and worked only as a helper to one of the other mechanics. Mr. Reilly never worked without another mechanic being there to help him. From my observations he was unable to work alone and could only perform work under direct supervisions from another mechanic. From my observations it is my opinion Mr. Reilly could never be a mechanic capable of working on our track machinery by himself. He would have been a good helper, but these are not the duties of an equipment repairman. He did not show me enough initiative for me to even take a chance on letting him work on a machine by himself."
(emphasis added)

It is established that Mr. Burtch was in the shop some three or four times during the 28-day period (Employees Exhibits L & M). From Carrier's Exhibit D as well as the above quoted letter of February 7, 1974, it is shown that a necessary part of the position requires the mechanic to be able to work on machinery by himself. Where the position calls for the demonstrated ability to work alone on machines, then a "fair trial" for the position necessitates that the individual be allowed to work a machine by himself and the fact that he was not allowed to work on a machine by himself cannot be held to disqualify him. This is especially true where the record shows that the Claimant did satisfactory work on each and every job he was asked to do. (Employees' Exhibit H; Carrier's Exhibit H) There is not one showing in the entire record of any specific instance where the Claimant was unable to satisfactorily perform mechanics work. Mere conclusions and assertions, like Mr. Burtch's contention that Claimant did not show initiative, will not satisfy this Board that a fair trial was given Claimant. Clear and understandable evidence is required of the Claimant's disqualification. (See Award 187, where trial showed individual was unable to locate various parts of a rail motor car and was unable to adjust and care for them; see Award 1118 where individual refused to take a written exam; see Award 6760 where Carrier conducted a test to determine the ability of applicants to operate a derrick.)

Mr. Schilt's letter also written on February 7, 1974, is of no probative value. His report of Mr. Reilly's sweeping activities is mere happenstance. Admittedly, Mr. Schilt was not in the shop to observe the activities of repairmen, and Mr. Reilly could just as well have been working by himself on such tasks as welding tamping bars or rebuilding vibrator motors for tampers, as the record shows him to have in fact done (Carrier's Exhibit H).

From the entirety of the record, it is overwhelmingly evident that the Claimant did not receive a fair trial as required by Rule 15. Our findings do not conclude that the Claimant is qualified: only that he was not given a fair trial.

The Claimant suffered a loss, and he shall be restored to service in the Maintenance of Way Department and be given a fair trial for the position of Equipment Repairman; and he should be compensated for his net wage loss from the date of April 25, 1973, until three working days after February 19, 1974. In the conference of February 19, 1974, the Carrier offered to have an on-the-job evaluation of the Claimant, with the General Chairman and a representative of the Carrier to observe (Employees Exhibit Q). Such a procedure was a fair remedy for the situation; and this fair offer, with three days implementation time, serves to limit the Carrier's liability for further net wage loss. We are not empowered to grant coverage for Health and Welfare Benefits.

A W A R D

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of September, 1975.