

Award No. 474

Docket No. 381

2-D&RGW-MA-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That G. R. Ficklin, machinist apprentice, Grand Junction, Colorado, be reinstated to service with his seniority rights unimpaired and paid for all time lost.

EMPLOYES' STATEMENT OF FACTS: Mr. G. R. Ficklin, machinist apprentice, was dismissed from service on November 9, 1936, for accumulation of three uncleared delinquencies in accordance with the discipline rules governing technical training of apprentices, said rules not being covered in our agreement. In view of the fact that our agreement between the System Federation No. 10 and The Denver and Rio Grande Western Railroad does not call for any discipline in this manner to be given apprentices, we are, therefore, asking reinstatement of Apprentice G. R. Ficklin, and compensation for all time lost from date of dismissal from service.

POSITION OF EMPLOYES: The above mentioned apprentice was dismissed from service for accumulation of three uncleared delinquencies in accordance with the discipline rules governing technical training of apprentices; said rule not being covered in our agreement. In view of the fact that our agreement between the System Federation No. 10 and The Denver and Rio Grande Western Railroad does not call for any discipline in this manner to be given to apprentices, we are, therefore, asking reinstatement and compensation for all time lost from date of dismissal from service.

Our views on this matter are as follows:

First—It appears the Railway Educational Bureau of Omaha, Nebraska, persuaded the officers of the mechanical department of The Denver & Rio Grande Western Railroad to enter into a contract or agreement providing for the technical training of all apprentices employed, on the basis of said apprentices paying for such course on a monthly installment plan, and further, providing each such apprentice shall study the lesson sheets provided by the bureau for each calendar month, and submit finished answers or written analysis within a stipulated time, or failing, to be subject to discipline and dismissal.

Second—It appears that this contract or agreement was entered into by management with the bureau without consent or approval by the accredited

The management contends there was no violation of this rule, in that the schedule referred to is the shop work schedule commonly in existence for each of mechanical crafts.

It has been and is now the position of the management that:

1. There are no rules for either mechanics, or helpers, or apprentices in the printed agreement covering wages and working conditions, and no agreement or understandings elsewhere with System Federation No. 10 that prescribe or circumscribe the character and scope of a discipline system. On the contrary, Rules 33 (d) and 36 (e) recognize the existence of a system of discipline by dismissal and suspension from service pending investigation.

Furthermore, Rule 46—APPLICATION OF GENERAL RULES—reads:

“Except as provided under the special rules of each craft, the foregoing general rules shall govern in all cases.”

No allegation has ever been made that the carrier was without right to discipline mechanics or helpers because of the absence of an agreement with the organization respecting its right or authority to administer discipline, and the right recognized to exist for mechanics and helpers must likewise exist for apprentices.

2. Neither Mr. Ficklin nor his organization complied with the provisions of Rule 33 (f)—Grievances and Discipline—in that no appeal of record was made to any officer of the carrier until more than four months after his dismissal, such appeal then being made to the general mechanical superintendent and not, as required by rule, to the master mechanic.

3. The organization by presenting a claim for Mr. Ficklin on the basis of being “paid for all time lost” ignores the only schedule rule, viz.—33 (i), upon which such claim for compensation can be based, and this rule provides compensation only “* * * for the wage loss, if any, suffered by him, less any amount he may have received for any employment during such period.”

In conclusion, the management contends there has been no violation of schedule rules in the action taken with Mr. Ficklin, but on the contrary, special consideration was given Mr. Ficklin’s family situation by the offer to reinstate him in the service and permit him to complete his apprenticeship without continuing the apprentice technical training course.

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.

The parties to said dispute were given due notice of hearing thereon.

Claimant here failed to comply with that part of the grievance and discipline Rule 33 (f) to the effect that an employe dissatisfied with the decision shall take an appeal within ten days of advice of the decision against him.

Under the circumstances we are not at liberty to go into the merits of the case since the carrier has not waived that requirement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of July, 1940.

DISSENT ON AWARD NO. 474, DOCKET NO. 381

We dissent from the findings and award in this case for the reason that the referee misconstrued the proper application of the language and intent of paragraph (f) of Rule 33, as well as other provisions of that rule, to the end that the claimant in the case was denied the right, on this technicality, to have his case decided on its merits.

(Signed) H. J. Carr
Chas. J. MacGowan
George Wright
T. E. Losey
R. W. Blake