

Award No. 1594

Docket No. 1501

2-WAB-EW-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 13, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That George Drake was employed by the carrier as an Electrician in violation of the provisions of the current agreement.

2. That accordingly the carrier be ordered to discontinue the use of George Drake as an Electrician and remove his name from the Electricians' seniority roster.

EMPLOYEES' STATEMENT OF FACTS: George Drake was employed as a special apprentice by the carrier prior to his employment as an electrician during which time he spent as a special apprentice he worked about sixty (60) days in the electrical department and the balance of his special apprenticeship he spent working in other crafts and departments of the carrier.

George Drake was employed as an electrician at the Decatur locomotive shop on July 31, 1951. George Drake did not serve an apprenticeship as an electrician apprentice or electrician helper apprentice nor did he have four (4) years practical experience at the trade of electrician prior to his employment as an electrician.

The agreement effective June 1, 1939, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that the carrier arbitrarily employed George Drake in violation of the provisions of Rule 102, captioned qualifications for electricians, reading:

"Any man who has served an apprenticeship, or who has had four (4) years practical experience at electrical work and if competent to perform electricians' work and executes same to a successful conclusion within a reasonable time, will be classed as an electrician."

Attention is directed to the fact there is no designation whatever as to any specific class of apprentice in Rule 38 (h), or in Rule 102; further that the words "any man who has served an apprenticeship," appear in all of the special qualification rules that preface the special rules applicable to the several individual crafts of employes represented by System Federation No. 13.

That Drake served an "apprenticeship" under conditions as prescribed in agreement rules cannot be disputed.

That every individual who has completed a special apprenticeship during the life of the existing agreement has, on the completion of the special apprenticeship, been permitted to select the craft in which he desired employment as a mechanic, has been employed as a mechanic in that craft, and has established seniority as a mechanic in that craft, cannot be disputed.

It is the position of the carrier that such handling was in accordance with the clearly expressed intent of the rules of the agreement, and, while the carrier contends that the rules are clear and unambiguous in this respect, even though the rules were to be considered ambiguous, the action of the parties during the life of the agreement in connection with the application of those rules with respect to other special apprentices who have completed their apprenticeship during the life of the agreement is conclusive evidence that the rules have been properly applied in the case of George Drake.

Attention is further directed to the fact that the controlling agreement is an agreement between the carrier and its employes represented by System Federation No. 13, Railway Employees' Department, A. F. of L. Rule 38 is a general rule applicable to employes in all crafts.

This dispute is not a dispute between the parties to the controlling agreement, but is a dispute which has been raised by only one of the six organizations comprising the collective bargaining representative of the employes party to the agreement.

The submission of the alleged dispute described in the committee's ex parte statement of claim to the National Railroad Adjustment Board, Second Division, by the International Brotherhood of Electrical Workers is clearly an attempt by one of the organizations comprising System Federation No. 13 to bring about a change in the accepted application of a general rule of that agreement and is tantamount to a request by one of the six organizations comprising System Federation No. 13 for a new rule applicable to all employes covered by the agreement with all the employes represented by System Federation No. 13. The committee's contentions should be dismissed and claims 1 and 2 denied in their entirety.

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.

On June 21, 1948, George Drake was employed by the Carrier as a special apprentice to receive training in the work of the several crafts at Decatur, Illinois. In this training he worked considerably less time in the Electrical Department than that required of regular or helper electrician

apprentices. Upon completion of his special apprenticeship on July 30, 1951, he was employed the next day as an electrician in the Decatur Locomotive Department.

The conditions concerned with the employment of special apprentices are mentioned only in Rule 38(c) and (d) of the agreement governing the relations of the parties to this dispute. Nowhere do the general rules covering all the crafts or the special rules applicable to electrical employees state explicitly what shall or shall not be the employment status of special apprentices upon completion of their apprenticeships. Any answer to this question must come by indirection or implication (if at all), from a reading of the above-mentioned paragraphs in conjunction with the special rules dealing with electrician apprentices.

In Rule 105 and companion rules electrician apprentices are limited to regular and helper apprentices; there is no mention of special apprentices. Rule 102 states that an employe will be classed as an electrician if he has served "an" apprenticeship or has had four years practical experience at electrical work and is competent to perform such work. If it were not for the provisions of Rule 105 and related rules, it might be possible to interpret Rule 102 (in the words "an apprenticeship") as embracing special apprentices who have completed their training.

The general and special rules thus appear to be rather ambiguous on the precise issue before us. In such cases the unchallenged past practice of the carrier might then be controlling. But the record shows that what the carrier did in respect to special apprentice Drake it did only four previous times since the agreement providing for special apprentices became effective in 1939; and of these four cases, three involved the carman craft and one the machinist. In other words, the first time the carrier advanced a special apprentice to the electrician craft, the electrical workers' representatives challenged the carriers' right to do so; there is no past practice in respect to electricians.

Given the ambiguity of the agreement's provisions and given the absence of controlling past practice, it might be contended that the carrier has the prerogative of unilateral action here. We do not hold to this view in respect to the instant case. In their agreement the Parties did concur on and mention the use of special apprentices. That the agreement does not specify what the employment status of these men may or shall be after completion of training may fairly and reasonably be said to be the fault of both the carrier and the other parties, in the negotiation of the terms of the agreement. But all the parties did carefully spell out the conditions of apprenticeship employment and future employment status for helper and regular apprentices. In the light of all these circumstances we think the claim of the employes in this case must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1952.