

Award No. 4214

Docket No. 4075

2-GN-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the provisions of the current agreement the claimant was not given a fair trial to qualify as wrecker derrick fireman and,

2. accordingly the Carrier should reimburse Carman Harry Tansil in the amounts of:

July 18, 1960 - 6.30 A. M. to 2:30 P. M.	8	hours at time and one half
July 19, 1960 - 7:00 A. M. to 7:00 A. M.	24	hours " " " " "
July 21, 1960 - 12:30 A. M. to 7:00 A. M.	6½	hours " " " " "
July 22, 1960 - 7:00 A. M. to 7:00 A. M.	24	hours " " " " "
July 23, 1960 - 7:00 A. M. to 7:20 P. M.	12½	hours at time and one half
August 17, 1960	23	hours at time and one half
August 18, 1960	3	" " " " " "

and continuously until this claim has been resolved.

EMPLOYES' STATEMENT OF FACTS: At Interbay, Washington, a point where the Great Northern Railway Company (hereinafter referred to as the carrier) employs carmen, a fully equipped wrecking outfit is maintained and the wrecking crew members regularly assigned by bulletin.

Carman Harry Tansil, was assigned as the wrecker derrick fireman, by bulletin. On his first trip as wrecker derrick fireman, Carman Tansil, hereinafter referred to as the claimant, was disqualified as wrecker fireman without being given a fair trial.

Conference was held on August 22, 1961, at which time the carrier officer was shown the letter written by the claimant explaining his side of the story but the carrier declined to recognize it or offer anything old or new in support of its position.

Third Division Award No. 10078, O.R.T. v. S.P. (Pac. Lines), Referee Thomas C. Begley:

"With these thoughts in mind we have compared the Statement of Claim as submitted to the Board with the specific claims submitted to the Carrier and made the subject of the dispute. The dis-similarity is striking, and represents a substantial expansion of the claim prejudicial to the Carrier, unless there was a clear warning that the claim was meant to include incidents subsequent to those enumerated. A prolonged and diligent search of the records fails to reveal anything that could be said to put the Carrier on notice that a general claim, continuing into the future, was intended.

Therefore, we find that the claim here presented has not been handled on the property as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Hence the claim must be dismissed."

**THE CLAIM OF THE ORGANIZATION, THEREFORE,
IS WITHOUT MERIT FOR THE FOLLOWING REASONS:**

1. The organization admits that the job of steam derrick fireman is complicated and that the claimant was not sufficiently qualified to handle the duties of such a position on July 14, 1960.

2. The claimant was given a fair trial as contemplated in Rule 4(b).

3. The organization has failed to prove that the carrier did not give the claimant a fair chance to qualify.

For the foregoing reasons, the carrier respectfully requests that the claims of the employees be denied.

FINDINGS: The Second 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.

Carrier, at the time this dispute arose, maintained a large, steam powered wrecking derrick at Interbay.

On July 12, 1960, the Claimant was awarded a bulletined position as the wrecking derrick fireman.

On July 14, 1960, the wrecking crew and derrick were called to a derailment at Bellingham, Washington, between the hours of 5:00 and 6:00 P.M. and Claimant went along on his first assignment as wrecking derrick fireman.

On July 19, 1960, Claimant was advised by the Car Foreman at Interbay that the travelling engineer and derrick foreman had complained that Claim-

ant's work at the Bellingham derailment was unsatisfactory and that claimant was not qualified and that he was relieved from the position.

At the scene of the Bellingham derailment Claimant experienced difficulty with the water injector and with the firing of the boiler, and until corrected a twenty-five minute delay in the operation ensued.

The record discloses that the former fireman of this equipment was along on this trip as a groundman; that there was present an experienced engineer who knew the boiler operation; and that Claimant's instruction and assistance prior to the call, and enroute, was meager until the difficulty arose at the scene of the derailment.

We are not called upon to determine, nor can we, that Claimant is, or was qualified, but only to determine if he was given a fair trial before being returned to his former position.

A fair trial under Rule 4 (a) connotes to us an objective judgment, after adequate observation of a course of conduct, that a person is or is not qualified to render the service required.

Under the facts contained in this record, even though Claimant was at least in part responsible for a mishap which delayed the operation for about twenty-five minutes, we find that he was given only one trial, with inadequate instruction and assistance, and we find that the action relieving him and returning him to his former position was hasty and unwarranted, and that he was denied a fair trial within the meaning and contemplation of Rule 4(a).

Since this occurrence, there is no longer a position of derrick fireman in existence at Interbay. Rule 4(a) carries no particular sanction, except to insure a fair trial.

AWARD

Claim sustained. No monetary allowance.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1963.