Award No. 5054
Docket No. 4876
2-MP-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the controlling agreement, particularly Rules 37(c) and 32(a) were violated when the Missouri Pacific Railroad unjustly terminated the service of Carman Apprentice L. G. Humphrey at the close of his shift on May 28, 1964, Kansas City, Missouri.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to restore the above mentioned employe (L. G. Humphrey) to service with all service and vacation rights unimpaired, with full payments made toward his coverage under the existing Health & Welfare and Life Insurance provisions, and compensate him for all time lost since his service was terminated.

EMPLOYES' STATEMENT OF FACTS: L. G. Humphrey, hereinafter referred to as the claimant, was first employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as section laborer on May 16, 1963 at Osawatomie, Kansas, and was furloughed from that job as of July 1, 1963. He was then employed in July 1963 as switchman and worked in that capacity until December 28, 1963, at which time he was furloughed (during this period he sustained a leg injury, but lost no time from his job). During this period of employment with the carrier there was no complaint regarding the quality of his work, and in fact the carrier, recognizing his ability, retained him in service in the car department, i.e., he was employed as carman apprentice on January 2, 1964, and remained in that capacity until his service was terminated at the close of his shift on May 28, 1964.

On March 5, 1964, the claimant, who was now a carman apprentice at Kansas City, Missouri, was working with Carman R. S. Laffoon driving and bucking rivets (Carman Laffoon operating the rivet gun and the claimant bucking the rivets) and while performing this work the die slipped off the rivet and the plunger and die came out of the air hammer, the die striking

"These rules are not unreasonable, but are for the protection of all concerned, including the employes and travelling public.

The contention is not correct that the investigation was held 'because he had the misfortune to sustain an injury'; it was held to determine whether the incident involved negligence or violation of safety precautions. While Claimant was the one injured in this instance, negligence is costly to the Carrier as well as the one injured, and also endangers other employes and the public. The Carrier is not justly subject to criticism for investigating an employe's conduct merely because he was the person injured. On the contrary it might well be criticized for failing to make such investigation."

In the same way here, the carrier might well be criticized for retaining an apprentice who does not show the aptitude to perform the duties of his trade safely. The apprentice's attitude, along with his inability or unwillingness to comply with the rules and instructions including the safety rules, is more than sufficient reason not to retain claimant in service. The carrier has retained all but a few apprentices through the years and we have had little or no disputes with the organization concerning this matter. The carrier's action in this case fulfills the carrier's obligation to operate the railroad in a safe manner by retaining only those in service who performed their duties in a safe manner.

For the reasons stated above, the claim to restore claimant to service must be denied. There is, of course, no basis under the national agreement providing health and welfare benefits or under the group policy implementing those agreements for the request that full payments be made toward such coverage. The claim must be denied in its 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 waived right of appearance at hearing thereon.

The claim is that the Carrier unjustly terminated the service of the Claimant, a carman apprentice, in violation of Rules 32(a) and 37(c).

Rule 37(c) provides as follows:

"(c) If within the first period of training an apprentice shows no aptitude to learn the trade, he will not be retained as an apprentice."

Each training period is 130 working days, or about six months.

Rule 32 is the discipline rule and the provision of Rule 32(a) that an employe with more than 30 days' service shall not be disciplined or dismissed

without an investigation is not applicable to the determination of an apprentice's aptitude to learn the trade, which is not a disciplinary matter.

The Claimant entered the Carrier's service at Osawatomie, Kansas, on May 16, 1963, as a section laborer, resigned from that position on July 12, 1963, to transfer to Kansas City as switchman, and resigned as switchman on December 30, 1963, to become a carman apprentice. He started his apprenticeship on January 2, 1964, and worked about 53 days until March 5, 1964, when he was injured by a defective rivet gun, according to an undenied statement in the Employes' Submission, for which he subsequently received a $1500.00 settlement.

He was released for service on March 23, 1964, but did not resume work until April 3, eleven days later. On May 14 he strained his back but continued to work until May 28, 1964, when his apprenticeship was terminated by a notice stating: "You have shown no aptitude to learn the trade."

During the handling on the property the Director of Labor Relations wrote the General Chairman as follows:

> "Claimant was employed as an apprentice on January 2, 1964. The report of his supervisor on March 1, 1964 shows that claimant's work was below average, that he has not displayed a working knowledge of rules and instructions pertaining to his position, that he did not have capabilities for advancement to a higher position and that it was felt he may not comply with rules and instructions. In addition, the supervisor reported his attitude needed improvement, his temperament was questionable and his dependability doubtful. The supervisor recommended that his application be disapproved."

The Employes show that Claimant's correspondence school grades were good, and that the men with whom he worked considered him a good apprentice. They allege that the Carrier disqualified him as an apprentice because he had just obtained a settlement for his injury, and that the two unfavorable supervisors' reports which constituted the basis for the termination of his apprenticeship, had "recently been manufactured in an effort to give some credence to the Carrier's unjust dismissal of the Claimant". However, no proof of that assertion is offered, and the reports are on the Carrier's Form 15304 for "Evaluation by Supervisor" in the "Orientation Record" of the apprentice, and contain separate questionnaire sections for "Introduction–First Day," "Performance–First Week", and "Follow Through on Work Assignment – To Be Completed During or Before Fourth Week", and an "Evaluation by Supervisor". The evaluation was made by each Supervisor under date of March 1, 1964 and signed by the Employing Officer as of March 2, 1964. On the first page of each two-page form, was this instruction in capitals:

> "THIS RECORD, IN ALL CASES, MUST BE COMPLETED AND FORWARDED TO SUPERINTENDENT BY OR THROUGH EMPLOYING OFFICER BEFORE MARCH 2, 1964.
>
> It will become part of Employe's Personnel Record"

Each "Evaluation by Supervisor" over the Supervisor's signature was as follows:

"1. Did he cause an accident, was he injured or did he indicate in any manner he would be an unsafe employe **Yes**

2. Has he displayed a working knowledge of Rules and Instructions pertaining to his position **No**

3. Does he appear to have capabilities for advancement to a higher position?

Yes .....

Doubtful .....

No ×

4. Recommend application be:

Approved .....

Disapproved ×"

These records appear regular, and there is no indication that they were not made in due course as required on the first day, and at the ends of the first and fourth weeks, and on March 1, 1964.

The claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1967.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.