

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

Parties to Dispute: ( International Association of Machinists  
( and Aerospace Workers  
(  
( St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

- I. The Carrier damaged Machinist Helper Donald Romaine by arbitrarily terminating his apprenticeship without contractual sanction and that the Carrier should be ordered to permit Claimant to resume his apprenticeship training, restore his seniority date as an apprentice and pay him the difference between his actual earnings and those of a machinist for each day that his training was interrupted.

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, first employed as a laborer and later promoted to machinist helper, was subsequently, on February 22, 1973, promoted to machinist helper apprentice. His status as helper apprentice was terminated after he had served 1006.7 hours in that capacity and he was set back to his former seniority as a machinist helper.

We do not agree with Petitioner's contention that Rule 28-5, which applies to helper apprentices, precludes the disqualification of a helper apprentice after his first 90 days of work in that position. Rule 28-5 reads as follows:

"In promoting helpers to position of helper apprentice, senior helper in point of service, if efficient, shall have preference. If after the first 90 working days helper apprentice shows no aptitude to learn the trade, he shall be set back to helping and retain his former seniority as helper."

The key time limitation is "after", and not within, 90 work days. That provision is designed to protect the employee and to give him at least 90 days to qualify. If the parties had intended a different result, they would have used the word, "within", instead of "after", as they were careful to do in Rule 26-4.

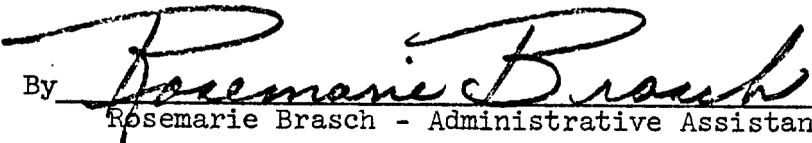
The fact that Carrier waited as long as 36 days beyond the 90 day prescribed minimum time to terminate the helper apprenticeship could be a matter of concern if coupled with other evidence. However, there is no proof that Claimant was prejudiced by the delay or that Carrier acted capriciously in that regard in disqualifying him as helper apprentice or that its action resulted from the malice or hostility of its supervisory force.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of June, 1975.