

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Boilermakers)
(
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That Boilermaker Apprentice Armando Velarde was unjustly dealt with when he was removed from the service of the Southern Pacific Transportation Company on May 16, 1974 and that said removal was in non-compliance with Rules 39 and 43 of the MP&C Department Agreement. That accordingly, the Southern Pacific Transportation Company make Boilermaker Apprentice Armando Velarde whole by;
2. Restoring Armando Velarde to his former position with all rights and fringe benefits unimpaired, including seniority, vacation, hospitalization, health and welfare and death payments all of which are to be paid by Southern Pacific Transportation Company.
3. That the Southern Pacific Transportation Company compensate Boilermaker Apprentice Armando Velarde at his pro rata rate of pay for all time lost while held out of service and violation corrected.
4. In addition to the money amounts claimed herein, the Southern Pacific Transportation Company shall pay Armando Velarde an additional amount of 6% per annum.

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 entered Carrier's service as a Boilermaker Regular Apprentice on December 13, 1973. On May 16, 1974 Claimant was formally notified of Carrier's determination that he had shown no aptitude to learn the trade and, in accordance with Rule 43 (f), was not being retained as an apprentice and was being removed from the seniority roster.

Rule 43(f) provides:

"If within the first service period of 130 days a regular apprentice, or within the first 65 service days a helper apprentice, shows no aptitude to learn the trade, he will not be retained as an apprentice. Helper apprentices and regular apprentices when drawn from the rank of helpers, will retain seniority as helpers during the respective 130 and/or 65 service days provided for in this paragraph." (Underscoring added).

The precise question to be resolved herein was determined between these parties in Second Division Award No. 6873 holding, in pertinent part:

"Rule 43(f) is the controlling rule of the applicable agreement. It stipulates that 'If within the first service period of 130 days a regular apprentice, or within the first 65 service days a helper apprentice, shows no aptitude to learn the trade, he will not be retained as an apprentice.'

Carrier's action was plainly taken within the prescribed 130 days and the fact that five and one-half working hours of the 130th day had elapsed before Claimant was disqualified does not detract from its timeliness.

Since the issue before us concerns Claimant's qualification as a regular apprentice and Rule 43(f) deals specifically with that subject, Rule 43(f) is controlling and Rules 39 and 40, concerning respectively, discipline and a 60 day period to establish competency, are not in point.

It is well settled that Carriers, charged as they are with responsibility for railroad operations, have considerable latitude in determining an employee's fitness and ability and that the Board will not substitute its judgment for that of Carrier in that regard in the absence of a showing that Carrier's evaluation was arbitrary or capricious. See, e.g., Third Division Awards 12669, 13759, 13876 and 16871.

The record shows that Claimant was given a considerable period, at Carrier's expense, to receive training and to qualify and that Carrier's determination was arrived at after considering the reports of appropriate supervisors and was not cavalier.

"Accordingly, while this Board is not passing upon the aptitude of Claimant, it finds no basis in this record for disturbing Carrier's decision not to retain Claimant as an apprentice. The claim will be denied." (Underscoring added).

The Board finds no reason to deviate from Award No. 6873.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of April, 1977.