

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.
 { (Electrical Workers)
 {
 { Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician Apprentice Pete M. Alvarez was unjustly treated when he was removed from service on September 13, 1974 for allegedly failing to show aptitude to learn the trade as outlined in Rule 43, Paragraph (f) of the current controlling agreement between Southern Pacific Transportation Company and System Federation No. 114, Railway Employees' Department, AFL-CIO.
2. That, accordingly, the Carrier be ordered to:
 - (a) Restore the aforesaid employee to service, with all service and seniority rights unimpaired, compensate him for all time lost and with payment of 6% interest added thereto.
 - (b) Reinstate all vacation rights to the aforesaid employee.
 - (c) Pay employee's group medical insurance contributions, including group medical disability, dependents' hospital, surgical and medical and death benefit premiums for all time that the aforesaid employee is held out of service.

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.

Between March 15, 1974 and September 13, 1974, Claimant was assigned as an Electrician Apprentice in the Motive Power and Car Department. Prior to March 15, 1974 Claimant was employed by Carrier as a Laborer.

By letter dated September 13, 1974 Carrier's Plant Manager wrote Claimant as follows:

"Referring to your indenture as Electrician Regular Apprentice dated March 15, 1974.

Having shown no aptitude to learn the trade, effective close of shift, September 13, 1974, in accordance with Rule 43, Paragraph (f) of Agreement between Southern Pacific Company and System Federation No. 114, Railway Employees Department, American Federation of Labor, you are not being retained as an apprentice and your name is being removed from the Electrician Regular Apprentice's Seniority Roster accordingly."

Rule 43(f) referred to above 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."

It is clear that under Rule 43(f) Carrier has the right to make judgments as to the aptitude of an apprentice within a prescribed period of days. In the instant dispute Carrier made such a judgment, and this Board cannot set that judgment aside unless it is shown by substantive evidence of probative value that Carrier was arbitrary or capricious in its action. There has been no such showing in this dispute.

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 8th day of November, 1977.