Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7458
SECOND DIVISION Docket No. 7358
2-CMStP&P-EW-'78

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employes' Department, A. F. of L. - C. I. O. (Electrical Workers)
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employes:

1. That Trolley Linemen Helpers R. D. Hitchcock, N. T. Anderson, D. R. Johnson, G. R. Bleeker and R. D. Scofield, all furloughed January 17, 1975, be returned to their former positions.

2. That they be compensated for each day they were denied employment from June 30, 1975 while others were assigned to perform their work, until the violation is corrected.

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.

This is a claim on behalf of five Trolley Lineman Helpers, furloughed on January 17, 1975, for return "to their former positions", with pay from June 30, 1975. On the latter date, the Carrier promoted five other employes, all with long service with the Carrier, to the position of Trolley Lineman Apprentices, while the five Claimants remained on furlough.

The Organization claims violation of Paragraph (a) of Agreement Covering Trolley Linemen Apprentices, dated October 15, 1951, which reads as follows:

> "Apprentice linemen will be selected from the rank of linemen helpers; ability and seniority will govern, and selections will be made in conjunction with the craft's local authorized representatives or General Chairman. If within six (6) months an apprentice lineman shows no aptitude to learn the trade, he will not be retained as an apprentice lineman."

The claim can most easily be considered in two parts. The first has to do with alleged violation of that portion of Paragraph (a) of the Agreement Concerning Trolley Linemen Apprentices which states:

> "Apprentice Linemen will be selected from the rank of linemen helpers; ability and seniority will govern ..."

In support of this provision, the Carrier refers to its letter to the Organization dated November 26, 1951, which states in part:

> "During discussion of this matter (the Agreement Concerning Trolley Lineman Apprentices) it was understood that the intent of the Agreement would be that if there is a lineman helper who appears to have sufficient fitness and ability to acquire the experience necessary to properly perform the work of a journeyman lineman, such employe should be advanced to the position of apprentice lineman in preference to anyone else and if there are no linemen helpers with sufficient fitness and ability to be so advance, an opportunity should then be given to groundmen for advancement to position of lineman apprentice."

It was the Carrier's judgment that the five furloughed Trolley Lineman Helpers, each of whom had approximately six months of active service with the Carrier, did not meet the requirements as outlined above for advancement to apprentice status. It therefore selected five other employes whom the Carrier felt did meet the requirements.

The Organization argues that the initial assignments of Apprentices could readily be performed by the furloughed Helpers, and that the promotions were made to accomodate the five employees who were assigned. Neither of these considerations, even if true, is to the point. No showing was made that the Carrier violated the first portion of Paragraph (a) of the quoted Agreement in its actions. On the contrary, it exercised the prerogative which is reserved to itself in the selection of Apprentices.

The second portion of the Claim has to do with the Carrier's alleged violation of Paragraph (a) which states:

> "... and selections will be made in conjunction with the craft's local authorized representative or General Chairman..."

The Carrier argues that this portion of the Paragraph (a) was not cited or argued by the Organization on the property, and, therefore, it may not be raised in support of its case before the Board.

The Board does not agree. In its initial and timely claim on August 7, 1975, as well as its subsequent letters exchanged on the property, the Organization quoted Paragraph (a) in its entirety. The Carrier cannot be said to be unaware of the contents of the full paragraph, even if emphasis was placed by the Organization on the more substantive portion involved in the initial part of the first sentence.

Without contradiction by the Carrier, it is apparent that no prior consultation was held with the "craft's local authorized representative or General Chairman". But for this procedural violation, what is the appropriate remedy? On this basis alone, the Board cannot direct that the five furloughed Helpers take the place of the five employes selected as Apprentices. To do so would improperly defeat the right of the Carrier to make selective judgment in the designation of Apprentices. Absent such a remedy, it cannot be found that the Claimants suffered loss of pay or positions.

There is a final consideration: the Claimants seek to "be returned to their former positions", which presumably means that of Helpers. There is no showing that anyone displaced or replaced the Claimants as Helpers. Thus they have no claim to such non-existent positions.

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 7th day of February, 1978.