

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

Parties to Dispute: ( System Federation No. 21, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Southern Railway Company

Dispute: Claim of Employees:

1. That Carman Brooklyn Clark, Jr., Hayne Shop, Spartanburg, S. C., was unjustly disqualified from his position as Inspector-Switch List and was denied an investigation.
2. That accordingly, the Carrier be ordered to return Carman Brooklyn Clark, Jr. to the Inspector-Switch List assignment and give him proper training as other employees have been trained in the past.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 was the successful bidder on an Inspector-Switch Test position. Claimant was on the job some four weeks after which he was removed from the position due to having been disqualified for lack of fitness and ability. Carrier maintains that it is the prerogative of management to determine if an employee is qualified to fill a position and to remove an employee who it determines to be unfit.

A request for an investigation under Rule 34 was requested but denied by Carrier. Rule 34 is the Discipline rule. The case at bar is not a discipline case and no right to an investigation accrues to claimant under the facts herein.

For the claimant to prevail in this matter he must prove that the actions of the Carrier in removing him from his position were arbitrary, capricious or discriminatory. The record in the instant case reveals that

the claimant was given every opportunity to learn and succeed in the Inspector-Switch Test position. The Carrier acted within its management prerogative when it removed the claimant from the position. Its actions were reasonable and responsible. We cannot support the claim.

We find that the agreement was not violated.

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 1st day of November, 1978.