

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { System Federation No. 162, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Carmen)
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated Rules 34 and 28 of the controlling agreement when they unjustly dismissed Carman P. O. Aleman from their service September 29, 1977, following investigation held on August 24, 1977.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to reinstate Carman Aleman to service with seniority rights unimpaired; compensate him for all time lost since August 3, 1977; make him whole for all vacation rights and for any other benefits he would have earned during the time he 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 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.

The claimant, Mr. P. O. Aleman, was hired by the Carrier as an apprentice on May 23, 1977.

A letter dated August 3 of the same year notified him that he had not shown aptitude to learn the trade within his first service period of 122 days, and therefore he would not be retained in service as an apprentice. The Organization and claimant requested an investigation in accordance with contractual rights and that hearing was completed on August 24, 1977. The Carrier advised Mr. Aleman by letter on September 29, that he was dismissed from service.

There is a memorandum of agreement between the parties which establishes an apprenticeship program in order to improve the availability of competent, skilled journeymen.

The Carrier relies upon Rule 39(g) of that document to justify the dismissal. The rule reads in pertinent part:

"If within the first service period of 122 days an apprentice shows no aptitude to learn the trade, he will not be retained as an apprentice."

In assessing the penalty, the Carrier points to the Evaluation Performance Sheet filled out by the car foreman. The organization rebuts that assessment by testimony of the lead inspector. It is sufficient to note that there is conflicting testimony regarding the aptitude of the claimant.

The record reveals that Mr. Aleman was hired as an apprentice on May 23, 1977, given one week of schooling and promoted to carman on June 8. Rule A(b) of the memorandum of agreement provides among other things, that the first sixty days of training will consist of general orientation and theoretical training in the craft for which he was hired. There is nothing in the record to indicate that such an opportunity was afforded the claimant. The foregoing illustrates the problem. The memorandum of agreement provides for a rather comprehensive procedure of training which the record indicates was not afforded Mr. Aleman. Rule 39(g) does not stand alone and the Carrier cannot rely upon that provision unless it has fulfilled, in a reasonable fashion, the obligations spelled out in the other sections of the agreement. This Board is of the opinion that the Claimant is entitled to another opportunity to qualify for work with the Carrier.

There are in the record some problems which are of legitimate concern to the Carrier. It would be a reasonable assumption that they are founded in the personal problem inherent in the adjustment from military assignment to the civilian industrial world. The claimant has suffered economic loss during his period of discharge and it is presumed that such penalty will be remedial in nature.


A W A R D

The claimant will be returned to service with the Carrier as an apprentice without pay for time lost. Successful completion of the apprentice period will provide the seniority date to which he would have been entitled had the present removal from service not occurred.

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 5th day of March, 1980.