

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Memorandum Agreement of January 15, 1942 and Rule 31 of the controlling Agreement when they sent Carman Apprentice C. C. Jackson home January 12, 1979 for allegedly being delinquent in his apprentice lessons.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman Apprentice C. C. Jackson in amount of eight (8) hours at the pro rata rate for their violation.

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, Apprentice C. C. Jackson, was sent home by Carrier on January 12, 1979, for not being current in his apprentice lessons. The Organization claims that Carrier had no right to force Claimant out of service. It asks that Claimant be compensated in the amount of eight (8) hours at the pro rata rate.

As an apprentice, Claimant's training period, especially in regard to written lessons, is covered under the terms of the Memorandum Agreements of January 15, 1942 and May 16, 1974. In pertinent part, they state:

"MEMORANDUM AGREEMENT:

This Agreement made as of the 15th day of January, 1942, by and between the Missouri Pacific Railroad and System Federation No. 2 Railway Employees' Department A.F. of L. Mechanical Section Thereof.

"RECITALS:

The education of apprentices in their respective trades is recognized as being essential, therefore, it is mutually agreed to supplement existing Rules 34 and 35 of wage schedule agreement effective July 1, 1936, that govern the employment and working conditions of apprentices, to wit:

AGREEMENT:

- 1-(a) Apprentices in service as also those hereafter entering the service will be required to participate in a technical training course, the tuition fees for which will be borne by the railroad.
- 1-(b) The passing grade for each lesson in the apprenticeship course will be 75%.
- 4-(a) An apprentice who fails to maintain the study schedule requirements of two new examinations each month becomes delinquent in any month in which he is one or two examinations behind in schedule. He can clear his delinquency by submitting the required number of new examinations thus placing himself back on schedule.
- 4-(b) An apprentice who accumulates two (two separate months) uncleared delinquencies (delinquent in submission of his examination papers) can clear his delinquency by submitting the required number of new examinations and thus place himself back on the schedule.
- 4-(c) An apprentice who accumulates three (three separate months) uncleared delinquencies (delinquent in submission of his examination papers) is subject to removal from service following investigation to be held as provided for in the grievance and discipline rules Nos. 31 and 32 of the wage schedule agreement effective July 1, 1936.
5. An apprentice who removes himself from the service for cause mentioned in Section 4-(c), will, after proper investigation is held, be given one more chance under the following conditions;

IT IS AGREED:

1. Paragraph (1) of Rule 37 - Miscellaneous Apprentice Rules, in which the Memorandum

Agreement beginning on page 92 of the current agreement is set forth, is amended to provide that carman apprentices will be required to complete a technical training course consisting of 72 lessons at the rate of three lessons per month so that the apprentice will complete all of the lessons within a two-year period. After the effective date of this agreement, apprentices in service will be required to complete all of the lessons at the rate of no less than three per month." (Emphasis added)

Claimant initially turned in his correspondence course lessons in a timely manner. Subsequently, however, the Railway Education Bureau returned several of these lessons because Claimant had failed to make a passing grade as specified in the Memorandum Agreement of January 15, 1942. Since Claimant's lessons did not receive a passing grade, we must conclude that he did not complete his lessons in a timely fashion.

In Award 7287, we held that Carrier, consistent with the Memorandum Agreement of May 16, 1974, hold out an apprentice who is in default with respect to the due date of apprentice lessons. Nothing here persuades us that our determination there was incorrect. As such, we must conclude that Carrier acted within the provisions of the Agreement when it held Claimant out because he was delinquent in his lessons. Surely lessons cannot be viewed as having been completed when they fail to earn a passing grade and Claimant failed to submit the failed lessons. Stated simply, Claimant failed to complete his lessons in the prescribed time. Under the plain meaning of the Memorandum Agreement of May 16, 1974, Carrier was warranted in sending him home.

We will deny the claim in its entirety.

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 3rd day of June, 1981.