Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9027
SECOND DIVISION Docket No. 8446
2-ATC-MA-'82

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Auto-Train Corporation

Dispute: Claim of Employes:

1. That under the current Agreement, Auto-Train Corporation, hereinafter referred to as the Carrier, arbitrarily hired former Junior Mechanic Danny Hatfield as a Mechanic on 9-18-78, at Sanford, Florida, which is a violation of Article XXVI (Composite Structure and Wages) of the May 1, 1977 Agreement.

2. That accordingly, Carrier be ordered to place Mr. Hatfield in the Junior Mechanic's Training Program where he should be slotted, based on prior junior mechanics training and related experience.

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.

In this case, the Organization asserts that the Carrier violated Article XXVI of the controlling agreement when it hired Mr. Hatfield as a Mechanic on September 18, 1979. The Organization urges this Board to order the Carrier to place Mr. Hatfield in the appropriate level of the Junior Mechanic Training Program based on Mr. Hatfield's prior training and experience.

From April, 1973 to October, 1975, Mr. Hatfield performed service as a Non-Qualified Freight Carman on another property. This Carrier originally hired Mr. Hatfield on September 4, 1976 as a Junior Mechanic. During September, 1977, Mr. Hatfield was furloughed and he subsequently worked as a certified welder for Watercraft America, Inc. Without the agreement or consent of the Organization, the Carrier hired Mr. Hatfield as a Mechanic on September 18, 1979.

Article XXVI of the applicable Agreement provides for a composite mechanic structure with a comprehensive in-service training program. A Mechanic must be able to skillfully perform the duties of many crafts including work normally performed by Machinists, Electrical Workers, Carmen and Sheet Metal Workers.

The Junior Mechanic Training Program is a combined craft apprenticeship which takes four years to complete. When a worker successfully completes his training, he is eligible for promotion to Mechanic.

The Organization contends that Article XXVI contains definite language mandating phases of training covering all elements of a Mechanic's Scope of Work. To have skillful and able Mechanics, the Organization argues that all new employes (including Mr. Hatfield) should complete the Junior Mechanic Training Program. On the other hand, the Carrier claims it has an inherent management prerogative to choose whom it wishes to hire and to place a new employe, (such as Mr. Hatfield) in a Mechanic's position if it determines the employe has the training and experience necessary to perform the work. The Carrier contends it has been the past practice on this property for the Carrier to hire qualified outsiders as Mechanics and to promote many Junior Mechanics to Mechanic before they have completed the four year training program.

The Junior Mechanic Training Program is an essential component of a composite craft workforce. Benefits of the comprehensive in-service training accrue to both the employes and the Carrier. The workers learn a variety of crafts and the Carrier builds a skilled workforce and attains flexibility in the assignment of personnel and work.

Therefore, when Article XXVI is viewed in its entirety, it becomes clear that new employes should either complete the training program or demonstrate they have acquired, through previous experience, the ability to capably perform the diverse duties of a Mechanic. Contrary to the Organization's contention, there is no language in Article XXVI which prohibits the Carrier from placing new employes in a Mechanic position. However, since such new employes are circumventing the training program, the Organization may, as it has done here, challenge the qualifications of a new employe who has not completed the program. In the past, the Organization has agreed or tacitly consented to the Carrier's premature promotion of some Junior Mechanics but there is no evidence that the Organization has relinquished its right to question the qualifications of Mr. Hatfield. Hiring an unqualified Mechanic in a composite craft workforce defeats the purpose of establishing the comprehensive training program and adversely affects employes in the program. Based on the record before us, we agree with the Organization's position that Mr. Hatfield did not have sufficient experience and training to be hired as a Mechanic. He had completed barely twenty-five per cent of the Junior Mechanic Training Program and most of his other work experience was limited to welding. Thus, in September, 1979, the Carrier should have placed Mr. Hatfield in the appropriate phase of the training program.

The requested remedy in this case poses some unique feasibility problems. We note that Mr. Hatfield has been performing work as a Mechanic since September 18, 1979. This Board also recognizes that, at present, the Carrier is hardly a viable, ongoing entity. Nonetheless, we order the Carrier to place Mr. Hatfield in the Junior Mechanic Training Program for a period of ten months. After Mr. Hatfield completes ten months of training, he shall be restored to Mechanic status.

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A W A R D

Claim sustained to the extent consistent with our Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch-Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.

DISSENT OF CARRIER MEMBERS
TO
AWARD 9027 (DOCKET 8446)
(Referee LaRocco)

What is manifestly evident in this case is that the Majority has abrogated its function to stay within the bounds of the contract and has sought to be equitable, in its view, instead.

The Majority rightly points out at page 2 that:

> "....there is no language in Article XXVI which prohibits the Carrier from placing new employes in a Mechanic position".

The Employees may challenge the Carrier's determination, but such must be predicated upon some evidence. The Carrier pointed out in its October 27, 1978 letter to the General Chairman that:

> "Please find attached copies of correspondence received from the Florida East Coast Railway and Watercraft America Inc. Please note that Mr. Hatfield had a total of five years and one month's experience including his one year and two months service with Auto-Train. The manner of computing his work experience is consistent with prior practice and corresponds with recent reclassification of Junior Mechanics by Auto-Train and the International Association of Machinists and Aerospace Workers."

To this statement of factual experience the Employees simply replied that they had "no knowledge of his mechanical experience", but do not point to any deficiency in the Claimant. All that the Employees are able to muster is that to them, there are "many unanswered questions".

Carrier has the right in the first instance to determine qualification. To rebut such determination, there must be some evidentiary showing. The disposition made in Award 9027 is the result of opinion, not the facts of record. Other than the Employees' assertion, and now the mis-statement of

this Award, there was no evidence submitted to this Board that Mr. Hatfield was not qualified to be a mechanic.

We dissent.

P. V. Varga

J. M. Fagnani

D. M. Lefkow

J. E. Mason

J. R. O'Connell