

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 9447
Docket No. 8463
2-DC-OCAW-'83

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

Parties to Dispute: { Oil, Chemical and Atomic Workers International Union
 { Delray Connecting Railroad Company

Dispute: Claim of Employees:

Claim of O.C.A.W. Local 7-358 that:

- (1) The refusal of the Company to promote John Purcell from Welder-Apprentice Class B to Welder-Apprentice Class A after a period of one year was a violation of Article IX, Section 1 of the current collective bargaining agreement. (Grievance dated July 10, 1979).
- (2) Welder-Apprentice Class B John Purcell be promoted to Welder-Apprentice Class A and that he be compensated for all wage loss suffered, and that he be made whole in all respects.

Claim of O.C.A.W. Local 7-358 that:

- (1) The dismissal of Welder-Apprentice Class B John Purcell was without just and sufficient cause and on the basis of unproven charges. (Grievance dated August 13, 1979).
- (2) Welder-Apprentice Class B John Purcell be reinstated with all rights unimpaired and that he be compensated for all wage loss suffered and that he be made whole in all respects.

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 were given due notice of hearing thereon.

Promotion to Welder-Apprentice Class A

The Organization states that the Claimant was hired on April 21, 1978 as a "Welder-Apprentice Class B". The Carrier states that the Claimant was hired on April 21, 1978 as a "Class B Welder". It is the Organization's position that the Claimant should have been promoted to Welder-Apprentice Class A one year later, on April 21, 1979, citing Article IX, Section 1 of the Agreement which reads in pertinent part as follows:

"Except for the Bridge Operator classification for which the training period is above set forth, each Apprentice shall work one year in each Apprentice Classification and will be advanced to the next higher classification at the completion of each year of service; provided that he can qualify for such higher classification by successfully passing the Company's oral and written test to qualify for such higher classification."

The Carrier states that the Claimant was initially placed in status as a probationary employe for a 60-working-day period, that such probationary period was "extended because of his absences", and that the Claimant was not assigned to a "permanent job as a Class B Welder" until October 24, 1978.

Thus, according to the Carrier, he would not complete one year as Welder-Apprentice Class B, until October 24, 1979.

The Board finds no contractual basis for the Carrier's position. The Carrier's unilateral rights for a probationary employe are not in dispute. However, the record is clear that the Claimant was hired in a "Class B" status. Article IX, Section 1 refers to "year of service" (emphasis added). Unless otherwise excluded, there is no basis to find that work during a probationary period is not "service", especially in view of the Claimant's designation by the Carrier as a "Class B Welder" from the outset of his employment.

There is no indication that the Carrier provided the "oral and written test" specified in Article IX, Section 1. It had the option to do so; failure to offer the test cannot defeat the one-year advancement provision.

Dismissal Re Attendance Record

The Claimant was notified of an investigative hearing "regarding your attendance record" and "regarding your being absent from your position August 9, 1979 without notification". On the request of the Claimant and the Organization, the hearing was postponed from August 10, 1979 to August 13, 1979. The hearing did not proceed in its investigation of the employe's attendance record because of the Claimant's clear failure to cooperate in moving the investigation forward.

Following the hearing, the Claimant was dismissed from service. After filing a grievance concerning his dismissal, the Carrier states without contradiction that the Claimant was offered a hearing on the grievance but refused to participate.

The Claimant was offered full opportunity to present a defense at the investigative hearing. Failing to accept this opportunity, the facts as set forth by the Carrier must stand.

The record shows that the Claimant had previously served a three-day suspension based on absenteeism. His record through his period of employment shows repeated absences and tardinesses, in some instances without notice. This record was not contested by the Claimant.

A W A R D

Claim in reference to classification sustained to the extent that the Claimant shall be paid the difference between Welder-Apprentice Class B and Welder-Apprentice Class A from April 21, 1979 until his dismissal from service.

Claim in reference to dismissal is denied.

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 20th day of April, 1983.