

**Award No. 1413
Docket No. 1344
2-AT&SF-CM-'50**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Carman Apprentice Julian Torrez was unjustly dismissed from the service on November 4, 1949.

2. Accordingly the carrier be ordered to restore the aforesaid claimant to service with all service rights unimpaired and paid for all time lost.

EMPLOYES' STATEMENT OF FACTS: Mr. Julian Torrez, herein-after identified as the claimant, was employed by the carrier at Albuquerque, New Mexico, June 8, 1949, with assigned hours, 7:30 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M., as a carman apprentice until November 4, 1949, when, at 4:00 P. M. the claimant was removed from service without investigation, allegedly charged with improper attitude and aptitude.

On November 4, 1949, the claimant approached his foreman, Mr. Martin, advising him that his mechanic with whom he was assigned to work, was off sick, thus leaving him (the claimant) without any help, and that he was getting behind in his work on the assembly line. Later in the day Car Foreman Martin approached the claimant and asked him whether he wanted to sign up for some "Brownies" or stand formal investigation. To this the claimant replied that he knew of nothing wrong on his part and would prefer an investigation. At about 4:00 P. M. November 4, 1949, the claimant was instructed by Mr. Martin to turn in all company property and clock out as he (the claimant) was being discharged from service without an investigation.

Copies of statements signed by carmen mechanics in the Albuquerque shops with whom the claimant had been assigned to work during his indenture between June 8 and November 4, 1949, dealing with the claimant's attitude and aptitude, are submitted herewith and identified as Exhibits A, B, C, D, E, and F.

Copy of letter signed by the claimant is submitted herewith and identified as Exhibit G.

The agreement effective August 1, 1945, and subsequently amended, is controlling.

The employe representatives in handling this dispute on the property contended that no apprentice may be removed from service without invoking the provisions of Rule 33(d) unless it is mutually agreed between the parties concerned that an apprentice within the first period of apprenticeship shows no aptitude to learn the trade. There is nothing contained in Rule 35(e) and the interpretation of that rule agreed to by System Federation No. 97 that requires in each individual case a mutual agreement between the parties concerned before an apprentice can be removed from service within the first six months of his apprenticeship for failure to qualify and to show sufficient aptitude to learn the trade, as the particular organization in this instance is evidently contending. The carrier submits that when the parties mutually agreed to the interpretation of Rule 35(e), as it appears in Memorandum of Agreement No. I, that if an apprentice fails to qualify within the first six months of his apprenticeship, he may be removed from service without the necessity of a formal investigation, such cases are specifically excepted from the provisions of Rule 33(d) and no further agreement is necessary.

During the period August 1, 1945, the effective date of the current shop crafts' agreement, to November 4, 1949, the following apprentices were removed from service at Albuquerque, New Mexico during the first six months of their apprenticeship without a formal investigation because they did not show sufficient aptitude to learn the trade for which they were indentured:

| Name | Class | Date entered service | Date removed from service |
|-------------------|--------------------------|----------------------------|------------------------------|
| V. Sandoval | Boilermaker Apprentice | 10-10-45 | 4- 6-46 |
| M. T. Will | " " | 10- 8-45 | 4- 8-46 |
| Elias Montoya | " " | 10- 2-45 | 4- 8-46 |
| J. E. Kirkpatrick | Carman Apprentice | 2- 8-47 | 3-29-47 |
| S. F. Cotton | " " | 3- 8-47 | 3-29-47 |
| W. L. Hamic | " " | 3- 8-47 | 3-29-47 |
| M. L. Conley | " " | 2-23-49 | 4-27-49 |
| J. L. Goldey | " " | 5-31-49 | 7-30-49 |
| Gilbert Salas | Sheet Metal Worker Appr. | 11- 8-48 | 5- 6-49 |
| Julian Torrez | Carman Apprentice | 6- 8-49 | 11- 4-49 |

The apprentices listed above were all removed from service without a formal investigation, and except in the instant case, no complaint was received from the employe representatives protesting the removal of these apprentices from service without a formal investigation for failure to qualify during their probationary period.

In conclusion carrier asserts that its action in removing Carman Apprentice Torrez from service for failure to show aptitude to learn the trade without a formal investigation is specifically authorized by the interpretation of Rule 35(e) of the shop crafts' agreement contained in Memorandum of Agreement No. I dated January 22, 1946, and made effective January 1, 1946, by agreement with System Federation No. 97 as evidenced by the signatures of employe representatives affixed to that document (quoted in part in "Carrier's Statement of Facts"), one of which is that of the general chairman of the Brotherhood Railway Carmen of America.

Carrier further asserts that this claim is not supported by any rule of the current agreement nor by past practice and it is in effect simply a request for a new rule and accordingly should be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

After considering the evidence of record and the contentions and arguments of the parties at the hearing, the Division concludes the following award to be an equitable disposition of this particular case.

AWARD

The claimant shall be restored to his apprenticeship without retroactive pay; however, this disposition of this particular case is not to be used by the parties as a precedent in any other case or claim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Dorothy Fountaine
Acting Executive Secretary

Dated at Chicago, Illinois, this 15th day of December, 1950.