

Award No. 4327
Docket No. 4277
2-CMStP&P-SM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Sheet Metal Workers)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chicago, Milwaukee, St. Paul & Pacific Railroad Company improperly upgraded an apprentice to perform mechanic's work.
2. That the Carrier be ordered to compensate Sheet Metal Worker Rickaby twenty (20) days of eight (8) hours each at the welder's rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, hereinafter referred to as the carrier, employed Gordon Rickaby, hereinafter called the claimant, as a Sheet Metal Worker Apprentice at Deer Lodge, Montana and as a Sheet Metal Worker at Milwaukee, Wisconsin.

The carrier, prior to the occurrence of this dispute, had laid the claimant off and under the provisions of the rules of the agreement he was subject to call.

At Milwaukee Car Shops, the carrier was in the process of building car brass storage bins, which were to be shipped to the carrier's Car Repair Yard at Bensenville, Illinois.

On October 25, 1960, the carrier upgraded Apprentice Vernie Olsen to a mechanic's job for the purpose of taking care of building these storage bins. After working twenty days on this job, he was set back to apprentice status on November 21, 1960.

This dispute has been handled with all carrier officers authorized to handle disputes with the result that all have declined to adjust it.

With respect to the qualifications of Claimant Rickaby, as previously stated he was not qualified to perform the welding work required on the temporary new sheet metal workers position as he had no training in welding nor had he at any time performed any electric welding in view of which it goes without saying that he was unqualified for and, therefore, could not have performed the necessary welding work here involved. It was pointed out to the Sheet Metal Workers' Organization during various stages of the handling of this claim on the property that Claimant Rickaby was not qualified to perform welding and at no time or in any way did the Organization dispute this fact or, in other words, there is no dispute between the parties over the fact that Claimant Rickaby was not qualified to perform the welding work involved.

The carrier submits that under the circumstances there is absolutely no agreement basis for the instant claim and we respectfully request that the claim 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 employees 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.

Claimant was employed as a Sheet Metal Worker at Carrier's Milwaukee Shops, and had been laid off subject to call during the time involved herein.

Carrier was utilizing its Milwaukee Shops to fabricate sheet metal brass skids for use in the installation of a new car repair facility at Bensenville, Illinois, and in October, 1960, found need at Milwaukee of an additional sheet metal worker.

The additional sheet metal workers' job was not bulletined since it was to be less than thirty days' duration.

The Milwaukee Supervisors discussed this need with the local Sheet Metal Workers' Committee. It appeared that sheet metal worker Gazinski was next up on the seniority roster, but the Committee advised that he was working in another industry and did not desire to come on for this temporary job. Claimant's name was on this roster.

Carrier contends that at this point the Committee recommended the advancement of apprentice sheet metal worker Olsen to fill the temporary position, which was done. The recommendation alleged by the Carrier is denied by the Organization, and will be dealt with later in our findings.

There is in effect on this property an Advancement Agreement set out in this record as Carrier's Ex. "A", and as Employees' Ex. "A", dated March 16, 1942.

It is the Claimant's contention that he was a fully qualified Sheet Metal Worker; that he was available; and that the agreement was violated when the Carrier upgraded the apprentice Olsen.

We shall first dispose of two procedural problems raised by the parties.

The Organization contends that the letters of declination to the Local Committee do not comply with the requirements of the August 21, 1954 Agreement in stating an adequate reason for the disallowance of the claim. This matter was first raised here at the Division, and nowhere does the Record dis- close its consideration on the property. This objection comes too late and must be denied, whether it originally might have had merit or not.

The Carrier contends that the Organization has presented evidence in its rebuttal statement which was not considered on the property and which is not proper rebuttal. We uphold the objection to Exhibits 1 and 7 of the Organization's Rebuttal, which are both dated October 31, 1962, and which obviously were not considered on the property, since the letter of intent to file this claim with this Division is dated March 6, 1962.

The issues to be determined on the merits of this dispute are these:

1. Was the Claimant qualified and available?
2. Did the Committee recommend the upgrading of apprentice Olsen, and if they did were they estopped, and is claimant estopped from processing this claim?

The Advancement agreement heretofore referred to reads in part as follows:

"1. When new jobs or vacancies occur due to an increase of forces, or mechanics leaving the service, and are bulletined and no mechanics bid on the bulletin or are available for service, it will be permissible to advance apprentices or helpers as outlined below. The men advanced will not lose their seniority as apprentices or helpers, nor will they accumulate seniority as mechanics.

2. No advancement of apprentices or helpers will be permitted as long as qualified mechanics are available for hire.

6. All helpers to be advanced will be approved by the local supervisor and the General Chairman or Local Committee of the Craft involved before advancement is made, and will only be advanced at their seniority point."

As to question of whether or not the Claimant was qualified, we find statements in this record by the Carrier that he was not qualified to do welding. These are unsupported assertions only. On the other hand it is nowhere disputed that he was a qualified sheet metal worker within the Qualification Rule (Rule 76 of the Controlling Agreement), and presumably able to perform the classification of work set out in Rule 77.

We find that Claimant was qualified and available for this work.

Whether or not the Local Committee did or did not recommend the upgrading of apprentice Olsen is not determinative of the Claimant's rights. The seniority roster was available to the Committee and the Carrier. If an error was made by either of them in overlooking the Claimant, he is not to be penalized. No estoppel can be worked upon him through the acts or omissions of others, even his own Organization's Committee. His rights stem from the

applicable agreements, and until he forfeits or renounces such, he is free to pursue the remedies available for their violation.

There was a violation here, and Claimant is entitled to the compensation he would have earned had he been called to work the twenty days in question.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October 1963.