

**Award No. 4858**

**Docket No. 4783**

**2-L&N-EW-'66**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Electrical Workers)**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

(a) That the current agreements were violated when on January 17, 1964, the Carrier, by arbitrary and unilateral action, improperly removed Regular Electrician Apprentice F. W. Tupling from service.

(b) That accordingly, the Carrier be ordered to reinstate the claimant, Apprentice F. W. Tupling, with:

1. All seniority right unimpaired.
2. Compensation for all time lost since January 17, 1964.
3. All vacation right unimpaired.
4. Premiums on hospital and surgical group insurance paid.
5. Premiums on the Four Thousand Dollar (\$4,000.00) life insurance paid.

**EMPLOYEES' STATEMENT OF FACT:** The Louisville and Nashville Railroad Company, hereinafter referred to as the carrier, employed the claimant, F. W. Tupling, as a regular electrician apprentice at the South Louisville Shops, Louisville, Kentucky, and placed him on the roster as Rank No. 18, with seniority date of November 25, 1963. On January 17, 1964, without either the claimant or his daily authorized representatives being apprised of any charge or a fair hearing as prescribed by Rule 34 of the General Rules Agreement, Apprentice Tupling was removed from service.

A protest of carrier's untenable action as made immediately and on the next day a claim was filed for the restoration of claimant to service and that he be made whole for his loss suffered. On January 17, 1964, inquiry was made of the claimant's immediate supervisor, Section Manager Meador. Mr. Meador on January 17, 1964, immediately after the claimant was dismissed stated to

Carrier submits that the wording of rule 39(e) is clear and unambiguous and it is therefore not necessary to look to past practice to determine its proper meaning and application. But if any such interpretation is needed, the past practice at South Louisville Shops, the point where claimant Tupling was employed, fully supports the carrier's positions. Following is a partial list of apprentices who have been removed from service at South Louisville Shops under the provision of rule 39(e) before they had worked 130 days because of showing no aptitude to learn the trade, and in no case was an investigation held or the organization consulted:

I. J. McClure, Jr., Carman Apprentice.....	Separated July, 1947
S. W. Hall, Carman Apprentice.....	Separated Sept., 1947
P. C. Dowell, Carman Apprentice.....	Separated April, 1948
L. T. Whiteman, Carman Apprentice.....	Separated May, 1948
J. F. Koerner, Jr., Carman Apprentice.....	Separated Feb., 1949
L. H. Prater, Machinist Apprentice.....	Separated Sept., 1950
I. S. Cox, Jr., Carman Apprentice.....	Separated Sept., 1950
Billy Wilkins, Carman Apprentice.....	Separated Mar., 1951
F. W. Proctor, Carman Apprentice.....	Separated July, 1951
P. A. Faughender, Carman Apprentice.....	Separated Jan., 1952
J. E. Huff, Carman Apprentice.....	Separated Aug., 1952
Rayburn Brown, Carman Apprentice.....	Separated May, 1954
D. H. Keith, Carman Apprentice.....	Separated Dec., 1955
J. B. Perry, Carman Apprentice.....	Separated Oct., 1955
J. C. Thompson, Carman Apprentice.....	Separated Dec., 1963

Carrier submits that the handling afforded apprentice F. W. Tupling was in strict accord with rule 39(e) and similar handling in numerous cases in the past; that management did not act arbitrarily or capriciously but to the contrary was fully justified in removing claimant from its service; and that the claim for his reinstatement with his former seniority, pay for time lost, etc., 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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant contends that on January 17, 1964, Carrier improperly removed Regular Electrician Apprentice F. W. Tupling from service whom Carrier had employed as an apprentice with seniority date of November 25, 1963, without apprising Claimant of any charge or granting him a fair hearing as required by Rule 34 of the Agreement and that Carrier also violated Rule 39(f) of the Agreement. Rule 34 is the Discipline Rule similar in content to those contained in other agreements.

It is Carrier's position that Rule 39(e) of the effective Agreement is controlling in the instant case. It provides: "if within 130 days an apprentice

shows no aptitude to learn the trade he will not be retained as an apprentice"; that Claimant was in Carrier's service from November 25, 1963, to January 17, 1964; that during this time he demonstrated a lack of aptitude to learn the trade as substantiated by his Supervisor's statement; that the period of 130 days was a probationary period and the action taken by Carrier was specifically authorized by Rule 39(e); that this was not a disciplinary proceeding and Rule 34 and Rule 39(e) have no application to it.

The Discipline Rule herein does not extend to or purport to extend to Rule 39(e) or to any investigation of the qualifications of an applicant for employment. See Award 866—(Rudolph).

A statement contained in Award 1715 (Wenke) is quite pertinent to the present inquiry; "We have no right to determine whom the Carrier shall employ and what employment policies or standards it may apply in doing so. Why it may reject an application for employment, in the first instance, is a matter of its own concern." See also Award 956 (Sharfman).

In the instant case Carrier determined that claimant did not show any aptitude to learn the trade, that he lacked the qualifications to satisfactorily perform the work involved. The Board would not be justified in setting aside Carrier's decision unless Claimant had proven that Carrier's action was arbitrary and capricious. This, Claimant has failed to do.

See Award 2373 (Carter); Third Division Awards: 8536 (Bailer); 14011 (Dorsey); 14154 (Hall) and, in addition, a number of First Division awards cited in the record.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1966.