

Award No. 5421

Docket No. 5210

2-SOU-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Railway Co. violated the current agreement between the Electrical Workers, as represented by the International Brotherhood of Electrical Workers, and the Carrier, when the Carrier hired four men, namely, J. R. Hensley, D. D. Palmer, R. H. Perry and S. Farmer, and placed them on electricians' jobs at Citico Diesel Shop, for which they were not qualified.

2. That the Carrier be compelled to remove the aforementioned men from the electricians' jobs that they are currently attempting to work and replace them with qualified electricians.

EMPLOYEES' STATEMENT OF FACTS: The Southern Railway Company hereinafter referred to as Carrier, employed J. R. Hensley, D. D. Palmer, R. H. Perry and S. Farmer at Citico Diesel Shop, Chattanooga, Tenn., and placed these men on electrician's jobs. These men were also placed on the Electricians' Seniority Roster at Citico Shop, Chattanooga, Tenn., as evidenced by copy of Sheet 3 of the 1966 Electricians' Seniority Roster attached as Exhibit A.

The four referred to men have not served an apprenticeship or had the requisite four years' practical experience in any phase of electrical work as called for in Rules 45 and 135 of the current agreement between the Carrier and Employes as represented by the International Brotherhood of Electrical Workers.

This dispute has been handled with all officers of the Carrier designated to handle such disputes, all of whom have declined to make satisfactory adjustment.

The agreement effective March 1, 1926 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the Carrier erred when they employed Hensley, Palmer, Perry and Farmer as electricians

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.

The Organization contends that Carrier unilaterally abolished the apprenticeship program, and in 1953 consolidated its repair shops, one in Atlanta, Georgia, and the other at Chattanooga, Tennessee. That because of the abolition of the apprenticeship program, there developed a shortage of electrical workers. Because of this shortage, Carrier set up its own training program. This training program consisted of a 9 months school, during which time the trainees were paid by Carrier. At the completion of this school, the persons named in Part 1 of the claim herein were hired by Carrier and placed on electricians' jobs at the Citico Diesel Shop.

The Organization contends that Rules 45 and 135 of the current Agreement were violated for the reason that the 4 persons named in the claim did not possess the qualifications required by said Rules which are as follows:

Rule 45 — Titled: Applicants for Employment:

"Applicants for employment may be required to take physical examination at the expense of the carrier to determine the fitness of the applicant to reasonably perform the service required. They will also be required to make a statement showing address of relatives, necessary four years' experience and name and local address of last employer."

Rule 135 — Titled: Qualifications:

"Any man who has served an apprenticeship or who has had four years' practical experience in electrical work, and is competent to execute the same to a successful conclusion within a reasonable time will be rated as an electrical worker. * * *"

The Organization, in part 2 of their claim, requests this Board to compel Carrier to remove the named men from the electricians' jobs and replace them with qualified electricians.

Carrier contends that this Board lacks the jurisdiction to hear this case. The Carrier also contends that it is the sole judge of who shall work and who shall not work for the Carrier; that it is the sole judge of the qualifications of its employes and that the employes named in the claim are well qualified to perform the work for which they are employed. In other words, the Carrier contends that it has a right to set up their own training program; has the right to hire any employe it sees fit; and also has the sole discretion to determine their employes' qualifications. Carrier contends that Rules 45 and 135 are not mandatory rules requiring 4 years' practical experience in electrical work or completion of service as an apprentice in electrical work.

Before delving into the merits of this matter, an objection propounded by the Organization to Carrier's Exhibits S through Z1 and A through R for the reason that said Exhibits were not submitted while this claim was being processed on the property, must be ruled upon. The following language is found under the rules of procedure contained in Circular No. 1:

"all data submitted in support of Carrier's position must affirmatively show the same to have been presented to the Employes or duly authorized representative thereof and made a part of this particular question in dispute."

and also in the Resolution adopted by this Division on March 27, 1936, which in part is as follows:

"BE IT FURTHER RESOLVED, That if and when a hearing is held, the Second Division will not accept any known evidence not contained in the original submissions of the interested parties; * * *."

It is very apparent that the above lettered Exhibits were not submitted on the property and that this Board cannot consider such Exhibits in the determination of this dispute.

It is also noted that Carrier's brief contains surrebuttal which cannot be considered by this Board. Therefore, this dispute will be determined without considering Exhibits S through Z1, Exhibits A through R and the surrebuttal contained in Carrier's brief presented to this Board.

As to the merits of the case, the Organization's claim is in two parts. Part 1 of the Organization's claim recites that Carrier violated the current Agreement when it hired 4 men and placed them on electricians' jobs for which they were not qualified. Part 2 of the Organization's claim asked that Carrier be compelled to remove said men from the electricians' jobs that they are currently attempting to work and replace them with qualified electricians.

This Board finds from the record that the 4 men named in the claim did not have 4 years' experience; that they had not served an apprenticeship and had not had 4 years' practical experience in electrical work prior to the time that they were employed by Carrier. This Board further finds that all rules contained in the current Agreement are applicable to both the Carrier and the Employes. In other words, the necessary element of mutuality of application must be present in any valid, binding agreement. Since this claim does involve interpretation of specific rules of the Agreement, this Board finds that the Second Division and the National Railroad Adjustment Board does have jurisdiction to determine whether or not a rule or rules of an Agreement have been violated. The fact that this Carrier converted to diesel does not alter the terms of the Agreement. On page 101 of the Agreement appears a Memorandum of Understanding in the training of apprentices for diesel work. Since no evidence was submitted on the property that the men hired were qualified and the objection to the evidence of qualification submitted to this Board has been sustained, it must be held that there is no evidence of qualification for the named employes.

This Board finds that prior to the inception of this dispute, it had been the practice of this Carrier to observe the apprenticeship program except in a shortage, in which event the upgraded apprentices were not placed on the Seniority roster until their apprenticeship requirements had been fulfilled.

It is found by this Board that since the word "trainees" does not appear in the Agreement, Trainees must be considered as "applicants". There is no provision for a "trainee" to be hired at the completion of his "training period". Numerous awards commencing with Second Division Award 278 compel this Board to sustain Part 1 of the Organization's claim.

Part 2 of the Organization's claim asked that this Board compel the Carrier to remove the men named in Part 1 from the electricians' jobs and replace them with qualified electricians. This the Board cannot do for the reason that it does not have equitable jurisdiction. This Board can only determine whether or not a specific rule or rules in an agreement have been violated, and if so, this Board can order a monetary amount: be paid to a named employe for any loss such employe or employes might have suffered because of such violation. It cannot order the payment of a penalty. Likewise, this Board does not have authority to compel a Carrier to hire or fire an Employe because of its limitation of jurisdiction. Therefore, Part 2 of this claim must be dismissed because of lack of jurisdiction.

AWARD

Paragraph 1 of claim sustained.

Paragraph 2 of claim dismissed because of lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary