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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6430
Docket No. 6281
2-SLSW-EW-'73

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

Parties to Dispute: (System Federation No. 45, Railway Employees'
(Department, A. F. L. - C. I. O.
((Electrical Workers)
(
(St. Louis Southwestern Railway Company

Dispute: Claim of Employee:

1. That the St. Louis Southwestern Railway Company terminated the services of Electrician Apprentice, T. O. Riggins without just and sufficient cause and denied him the right to an investigation under Rule 24 of the Agreement.

2. That accordingly, the Carrier be ordered to reinstate T. O. Riggins to his former position as an Electrician Apprentice with seniority rights unimpaired and compensated for all wages lost plus an additional six per cent (6%) per annum and all fringe benefits attached to his position, beginning with July 3, 1971.

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.

Although the submissions do not agree as to dates of employment and beginning of apprenticeship, the parties do agree that claimant worked more than sixty days as a painter but less than 130-8 hour days, as an apprentice.

The Organization claims that the employe was improperly terminated without a hearing because Rule 23 provides that after sixty days an employee shall not be dismissed for incompetency. Rule 24 headed "Discipline" requires a hearing for disciplinary action.

Carrier contends that when the employe after sixty days of employment applied for and was granted the status of apprentice, Rule 26, headed "Apprentices" became effective. This Rule provides that an apprentice will not be retained as such if he shows no aptitude within 130 - 8 hour days of service, Rule 26 - 4.

The Organization then argues that even under the "Apprentice" Rule, Rule 26 - 5, provides that an apprentice shall not be dismissed before completing his apprenticeship except for just and sufficient cause.

The Organization has objected to Carrier's exhibits relative to claimant's lack of aptitude because they were not presented on the property, and the Carrier objected to claim for, "fringe benefits", because it was not presented when the matter was handled on the property. The decision may be reached without the need to consider any of the material to which objection has been made.

The language of the Agreement and labor relations practices which are so prevalent that they may be read into the Agreement as though written, provide the answer as follows:

1. After a sixty day probationary period, the employe could not be dismissed for incompetency and could not be disciplined unless a hearing was held, Rule 23 and Rule 24.

2. An employe who becomes an apprentice is subject to and entitled to the rules of apprenticeship, Rule 26.

a. If he shows no aptitude within 130 - 8 hour days, "he will not be retained as an apprentice." The Carrier is not required to justify the decision. It is a trial period, Rule 26 - 4.

b. The next paragraph says that he may not be dismissed or leave the service of his own accord before completing his apprenticeship, "except for just and sufficient cause." This speaks of "dismissal" from service as distinguished from "will not be retained as an apprentice." That an apprentice may not leave of his own accord is the only safeguard the Carrier may use to assure good faith of an employe in requesting apprentice training and to justify the investment which the Carrier makes in providing the training, Rule 26 - 5.

3. Reading Rule 26 - 4 and Rule 26 - 5 together, the Carrier may in its discretion decide that the employe does not show sufficient aptitude to continue his training. This decision must be made within 130 - 8 hour days. The employe would not be dismissed from service simply because he lacks aptitude as an apprentice. Dismissal requires just and sufficient cause.

4. The Carrier stated and the Organization does not deny that the claimant was offered a position as blacksmith helper at higher pay, which claimant rejected. Therefore, there was no dismissal. Termination of apprenticeship is not termination from service.

Aside from the reasoning above, the Organization claims its right to process a grievance under Rule 22. If the Organization could have sustained the burden of proving that the Carrier acted arbitrarily or capriciously in removing claimant from the apprentice training, it should have proceeded in that direction. It is not the same thing to ask for a formal investigation under Rule 24 when it is not required under Rule 26 - 4. When the Organization made the claim on the property, it is conceded that in denying the claim on the property, the Carrier stated that Rule 26 - 4 applied.

On the other hand, the Carrier may have overcome the problem by offering to a Organization on the property, the same information that it later presented to the Board. The Carrier would not have been prejudiced by volunteering helpful information which may have settled the matter.

We find that the Carrier properly terminated the apprenticeship of claimant as provided in Rule 26 - 4.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January, 1973.