

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the current Agreement, Memorandum Agreement and Decision No. SC-105 when Carman Apprentice T. W. Jacobson, Kansas City, Missouri, was sent home on June 5, 1974.
2. That accordingly, the Missouri Pacific Railroad Company, be ordered to compensate Carman Apprentice Jacobson in the amount of six (6) hours at the pro rata rate; for gasoline mileage for the required trip home; and in addition to the money amounts claimed, an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 by the Carrier at Kansas City, Missouri, as a carman apprentice with assigned hours 7:00 A.M. to 3:00 P.M. On June 5, 1974 at approximately 9:00 A.M., the Claimant was sent home because he had not turned in his apprentice lessons for the month.

The Agreement dated May 16, 1974, effective May 20, 1974, provides, in part, as follows:

- "1. Paragraph (1) of Rule 37 - Miscellaneous Apprentice Rules, in which the Memorandum Agreement beginning on page 92 of the current agreement is set forth, is amended to provide that

"carman apprentices will be required to complete a technical training course consisting of 72 lessons at the rate of three lessons per month so that the apprentice will complete all of the lessons within a two-year period. After the effective date of this agreement, apprentices in service will be required to complete the lessons at the rate of no less than three per month. ...

4. Apprentices who do not have their lessons completed on the date due will be sent home until the lessons are made current and will not be paid for time lost..."

Petitioner contends that nothing in these provisions or the other provisions of this agreement fixed the 5th of the month as the due date for apprentice lessons, and that pursuant to these provisions, the apprentice lessons were to be turned in within the month in which they were due.

Carrier maintains that its disputed actions with respect to the Claimant were in accordance with paragraph 4 of the agreement quoted above.

An apprentice training program in the various crafts has existed on the Carrier's property for many years. Prior to the May 16, 1974 Agreement, the program required completion of two apprentice lessons per month. The record shows that during this period, the Master Mechanic at Kansas City promulgated notice that apprentices turn in their lessons three days prior to the eighth day of each month. The asserted purpose of this requirement was to enable a check to be made to determine that all lessons were turned in so that they could be mailed to reach the Railway Education Bureau by the fifteenth of the month.

There is no evidence that any employee or his representatives raised any question or objection to this due date requirement for the submission of apprentice lessons. Claimant, whose employment as a carman apprentice, began on July 21, 1971, was required to comply with this due date requirement. There is no claim or evidence that he was unaware of this requirement or failed to comply with it prior to the instant case.

It is clear, from the record, that at the time the May 16, 1974 agreement was consummated the existing and accepted due date for apprentice lessons was the third day prior to the eighth day of the month. Paragraph 1 of that agreement does not specify a due date. The clause provides for the completion of the apprentice lessons per month. Paragraph 4 does not explicitly state a due date for the lessons. However, by the language "apprentices who do not have their lessons completed on the date due," the parties to the agreement plainly recognized that due date for the lessons existed and thereby indicated their intent that this provision was to be interpreted and applied with respect to the then established due date for the apprentice lessons, which, as we have found, was the third day prior to the eighth day of the month. Any doubt in this regard was subsequently dispelled by the

provision in Paragraph 4 of the June 2, 1975 agreement that "Lessons will be due the 5th of each month."

The record establishes, without dispute, that Claimant was in default with respect to the due date of his apprentice lessons and that Carrier proceeded in accordance with the provisions of the agreement then applicable to such a situation. The claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of April, 1977.

