

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That the Carrier violated the current agreement, particularly Rules 13, 35 and 39 when they improperly dismissed Havelock Shop's Upgraded (advanced) Carman Lance C. Goecke from service October 5, 1976.
2. That accordingly the Carrier be ordered to compensate Upgraded (advanced) Mechanic (carman) Lance C. Goecke in the amount of the Carman's rate at whatever hours the shop force is assigned to work, all paid holidays, all benefits under Travelers Insurance, all benefits under Dental plan, all benefits under supplemental sickness plan, all benefits under Railroad Retirement plan (unemployment, sickness and retirement) all time to count toward journeymen's date, all time to count for vacation credits and all records cleared of this dismissal, this claim to commence October 5, 1976 and continuing until Lance C. Goecke is restored to work at Havelock Shops.

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's service with Carrier was terminated when on October 5, 1976, Claimant was dropped from the Apprenticeship Training Program during his probationary period.

Claimant commenced his employment with the Carrier on April 5, 1976 as a freight carman apprentice in the Mechanical Department at Lincoln-Havelock, Nebraska. Shortly thereafter, there developed a shortage of carmen at the

Havelock Shops. Carrier responded to the shortage by bulletining new positions on the Lincoln Seniority District. As no bids for these positions were received by the Carrier, the Shop Superintendent at Havelock recommended that ninety-one (91) carmen apprentices be upgraded in accordance with Rule 39(b) of the Controlling Agreement dated April 1, 1970. In a letter dated June 2, 1976, Carrier formally transmitted this recommendation to the Organization and on June 22, 1976, the Organization agreed to the upgrading plan after having checked the seniority list covering the Lincoln Seniority District.

Claimant was among the ninety-one (91) apprentices who were upgraded following the Organization's approval. On June 24, 1976, Carrier bulletined position of Freight Carman in the Airslide Shop for the 11:00 PM to 7:00 AM shift. Claimant bid on this position and was awarded the job on July 6, 1976 receiving an upgraded apprentice date of June 24, 1976.

At the Airslide Shop, Claimant operated roto jets applying paint stripper to the inside of hopper cars. However, during the course of his employment at the Airslide Shop, the supply of hopper cars became temporarily exhausted and as a result, Claimant was reassigned to the main car shop where he worked on heavy repairs and operated a cutting torch. During the course of his employment at the main car shop, Claimant received a poor evaluation report regarding work performance by two of his second shift supervisors. As a result, Carrier dropped Claimant from the apprenticeship training program in accordance with Rule 38(c) of the Apprenticeship Agreement dated November 15, 1974 and because Claimant possessed no additional seniority he was simultaneously terminated from service.

The Organization takes the position that when Claimant was upgraded to the position of Freight Carman in the Airslide Shop in accordance with Rule 39(b) of the controlling agreement, Claimant was effectively removed from apprentice status and therefore was no longer subject to any of the provisions of the apprenticeship agreement except for part (f) of Rule 38 which requires that:

"Each apprentice including those upgraded, will complete the technical training which is relevant to his craft and if during the 122 day probationary period he fails to do so, he can be dropped from the program and Rule 13(g) is not applicable."

Therefore, the Organization argues Carrier improperly dismissed Claimant by invoking Rule 38(c) of the apprenticeship agreement as Claimant had been upgraded and was no longer an apprentice. In addition, the Organization maintains that the recognized practice in such matters with the Carrier has always been, when an apprentice assumes a Carman's Classification through upgrading, he assumes all responsibility of a carman and is governed under the language spelled out for carmen in the agreements in effect on the property.

In support of its belief that apprentices, once upgraded no longer have apprentice status unless formally downgraded, the Organization cites Rule 38(m) of the apprenticeship agreement which provides for a fixed ratio of apprentices to Carman mechanics of one (1) to six (6) respectively. The Organization contends the practice has been that when an apprentice leaves the ranks of apprentices through the upgrading process, his apprentice position is filled with a new apprentice in order that the quota of apprentices will be maintained as set forth in Rule 38(m). The Organization makes the point that if the Carrier maintains its position that the Claimant was still an apprentice at the time of his dismissal, then Carrier must be in violation of the ratio of apprentices to carman mechanics provided for in Rule 38(m).

As further evidence of its point Claimant was no longer an apprentice at the time of his dismissal, the Organization cites Rule 13(g) of the controlling agreement which, among other things, provides that when an employee fills a new job or a permanent vacancy and is not disqualified within thirty (30) days because of incompetency, the employee shall be considered qualified for such position. The Organization makes the point that Claimant had applied for and was awarded the Carman Mechanic's position in the Airslide Shop and had worked in that classification for one hundred and three (103) days, well in excess of the thirty (30) days provided for in Rule 13(g). As Claimant was not disqualified under Rule 13(g), the Organization argues he therefore was considered qualified for the upgraded position and thus was no longer considered to be an apprentice.

Reasoning that Claimant was improperly dismissed under Rule 38(c) of the apprenticeship agreement of November 15, 1974, the Organization takes the position that the instant case is a disciplinary one. In arguing that Claimant no longer had apprentice status, the Organization contends that in having been improperly dismissed, Claimant was denied his contractual rights under the controlling agreement of April 1, 1970. Specifically, Claimant was denied his right under Rule 35(a) to a fair and impartial investigation. Furthermore, in progressing the instant claim as a disciplinary matter, the Organization alleges Carrier violated Rule 34(a) of the controlling agreement when it failed to decline the claim at the first appeal level within the required sixty (60) days.

Carrier takes the position that Claimant remained in apprentice status, notwithstanding the fact that he was upgraded shortly after entering the apprenticeship program and while still in his first 122 day training and probationary period. The Carrier maintains that when several of the Rules governing apprentices are read and interpreted together, it can be concluded that both the Apprenticeship Agreement and the controlling agreement contemplated the situation of an apprentice being upgraded during the apprenticeship period. Specifically, Carrier cites the following Rules in pertinent part:

Rule 38(f) Technical Instruction -- "Each apprentice, including those upgraded, will receive and complete a course of instruction on the technical subjects related to his trade, the cost of which shall be paid by the company" (Emphasis added)

Rule 38(g) Transfers -- "Apprentices who are not working in an upgraded mechanics' status may be required to transfer to any other facilities and locations away from their home point for purpose of improving their training." (Emphasis added)

Rule 38(b) Training Period -- "Regular apprentices shall serve six training periods totaling 732 days."

Rule 38(1) Completion of Apprenticeship -- "Upon the date of completion of the apprenticeship training program under this agreement, the apprentice will be placed on the journeyman mechanics' roster of his craft on the seniority district where he commenced his training."

Rule 39(d) -- "Regular and helper apprentices upgraded or advanced under this agreement shall continue to accumulate seniority as apprentices and all time worked as a mechanic will be credited to their apprenticeship time. Upon completion of the apprenticeship time specified in the apprenticeship agreement then in existence, the apprentices advanced in accordance with this agreement will be placed and included on the seniority roster for mechanics in their respective classification either at the point then employed or at such other point where they are offered and accept employment as a mechanic." (Emphasis added)

In citing these rules the Carrier makes the following arguments:

- (1) There is a finite length of time (732 days) one must serve as an apprentice.
- (2) That only after completion of the apprenticeship period will the apprentice be placed on the journeyman mechanics' roster.
- (3) That if an apprentice should happen to be upgraded anytime while serving his apprenticeship period, the time worked in the upgraded position shall be credited towards the completion of the apprenticeship term.
- (4) That if an apprentice is upgraded while serving in his apprenticeship period, the apprentice will continue to receive and is required to complete a course of instruction on the technical subjects related to his trade.

Thus Carrier argues, the effect of upgrading an apprentice does not serve to terminate the apprenticeship period. For purposes of the governing

agreement, the Carrier declares, the apprentice, though upgraded, nevertheless remains an apprentice.

Since the Claimant continued in apprentice status and since he was still in his first one hundred and twenty-two (122) day training period which also constituted his probationary period, and further, since he was adjudged as lacking demonstrated aptitude and interest in learning the trade, Carrier argues Claimant was rightly and justifiably dismissed from service under Rule 38(c) of the apprenticeship agreement. Correspondingly, Carrier disagrees with the Organization's position that the instant claim is a disciplinary one and alleges the Organization did not properly progress the claim, thereby causing their case to be procedurally defective.

Specifically, Carrier alleges the claim was not progressed in a timely manner as it was not directly appealed to Carrier's highest officer designated to handle such disputes within the 60-day period provided for by Rule 34(b). Accordingly, the claim was not handled in the usual manner on the property as required by the Railway Labor Act, Section 3 First (i) and Circular No. 1 of the National Railroad Adjustment Board and as such, the Carrier argues, the claim must therefore be dismissed by the Board for lack of jurisdiction.

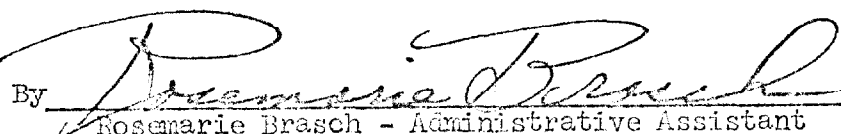
In closely scrutinizing the many well reasoned arguments advanced by both sides, we find the Claimant was, in fact, an apprentice at the time Carrier dismissed him on October 5, 1976. We reached this conclusion based on the fact that nowhere, in either the controlling agreement of April 1, 1970 or in the Apprenticeship Agreement of November 15, 1974, is there any language which suggests the apprenticeship program can be aborted or short-circuited as a result of an apprentice being upgraded. We did find however, that the language of several of the provisions regarding apprentices, when considered together, did indicate that both parties to the agreement had contemplated the situation of apprentices being upgraded while serving their apprenticeship term. Carrier therefore acted properly when it invoked Rule 38(c) as the basis upon which Claimant was dismissed from service. In so finding, we need not deal with Carrier's procedural objections.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of June, 1979.