Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8275
SECOND DIVISION Docket No. 8152
2-SOU-SM-'80

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Southern Railway Company

Dispute: Claim of Employes:

1. S. L. Price and R. L. Asselin protesting seniority date of A. L. Lawson.

2. Recommending he serve 732 days as Student Mechanic.

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.

Claimants both completed 732-day apprenticeships as sheet metal worker helper/student mechanics prior to being promoted to journeyman status. When they began their apprenticeships both had some previous experience in sheet metal work. One had done pipe work, while the other had done sheet metal fabrication work. Neither had experience with all phases of work within the sheet metal workers' craft or class.

On October 1, 1976 an individual was hired by the Carrier who had extensive experience, over a ten year period, in all phases of sheet metal work. This individual was not required to serve an apprenticeship but was hired as a journeyman sheet metal worker.

On August 10, 1977, the Claimants sent a letter to the Carrier questioning the applicant's having been placed directly on the journeyman's seniority list. The Claimants were still serving their apprenticeships and stated:

> "He is no more qualified than we are to be placed on the seniority list. (The Applicant's qualifications do not include the work (we) have performed preceeding his arrival. We are recommending that he serve 732 work days as Student Mechanic in phase four as we are doing."

The Carrier did not reply to the Claimants' letter or to a subsequent letter by the General Chairman within the sixty-day period specified in Rule 35 of the Agreement. On October 15, 1977 the Claimants sent a second letter to the Carrier, advising that the matter would be referred to the General Chairman.

The Carrier responded on November 8, 1977. After apologizing for not answering the previous letter, the Carrier advised the Claimants:

> "The fact is that from your wording I did not see that you were expecting an answer. I thought that you were simply going through the formality of notifying me that you intended to go higher than the local chairman level in attempting to have the seniority list adjusted as you requested."

The General Chairman and the Assistant Director of Labor Relations then had a number of meetings on the matter. They were unable to resolve the issue and, now, this Board must decide if the granting of journeyman's seniority to the Applicant was improper.

It is the Organization's position that, under Rule 39, the Applicant must work the 732 day apprenticeship. Rule 39 states, in relevant part:

> "PROMOTION OF HELPERS
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> RULE 39 ...(d) Helpers promoted to mechanic on and after the effective date of the agreement shall, subject to the election provided for in Paragraph (e) below, after working a period of three years as promoted mechanic, a total of 732 work days, (a period of four years, a total of 976 work days, for electrical workers) establish a seniority date as mechanic in the craft in which employed which shall be retroactive for a period of 366 work days computed from the date the promoted mechanic successfully completed working the number of work days as promoted mechanic as specified for his craft herein above. Days worked in a promoted capacity shall be computed on the same basis as creditable days of training are computed for Student Mechanics in Phase IV."

The Organization further argues that the claim should be sustained by virtue of the Carrier's failure to respond within the sixty days specified in Rule 35, which provides:

> "CLAIMS AND GRIEVANCES
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> Rule 35. (a) All claims orgrievances arising on or after January 1, 1955 shall be handled as follows:
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> ... Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance

"shall be allowed as presented, this shall not be considered as a precedent or waiver of the contentions of the carrier as to other similar claims or grievances."

The Organization notes in its rebuttal that the Carrier did not provide the text of the rules relevant to the awards that the Carrier cited, and thus, the Organization concludes that the Board should base its decision on the specific language of Rule 35 and not on awards of other cited tribunals.

The Carrier dismisses the Organization's allegation that Rule 35 was violated, arguing that the Claimants' initial letter contained no evidence or proof that would form the basis for a valid claim. The Claimants' protest, according to the Carrier, is just a statement of opinion. Thus, the Carrier concludes, it is of no consequence that the Carrier officer failed to render a decision within the sixty-day limit since at that time there was no dispute raised or pending.

The Carrier also notes that, in any event, its failure to respond within sixty days does not serve to validate the Claimants' "recommendation" that the Applicant be required to serve 732 days.

The Carrier makes the additional argument that, should this Board render other than a dismissal or denial award, the Applicant should be given notice as an affected party and permitted to be heard.

We are not persuaded by the Organization's argument that, under Rule 39, the Applicant must work the 732 day apprenticeship. No valid protest was made when the applicant was hired and it has not been demonstrated how Rule 39 has been violated.

No evidence was provided to support the Claimants' initial arguments that the Applicant was no more qualified than they were or that he had not performed work that they had. There is nothing that the Board can find in Rule 39 which prohibits the Carrier from directly hiring of the Applicant was anything but proper.

The Organization argues that the Carrier's failure to respond to the protest within sixty days justifies our sustaining the claim. The Carrier's defense is that the protest is fatally defective since it contained no evidence or proof.

The Carrier's failure to initially respond to the Claimants' letter is understandable given the non-specific nature of the protest. The time limits set forth in the agreement do not provide the Carrier with discretion in deciding which "claims" must be answered and which may be ignored. In the interest of better industrial relations, the Carrier should have replied to the Claimants within sixty days. However, we find that the Carrier's silence was justified in view of the informal nature of the Claimants' letter and their failure to allege rules violations or request specific relief.

Thus, the Board concludes that the claim falls on its merits and that the Carrier's failure to respond to Claimants' initial letter did not violate the time limits specified in Rule 35.

The agreement was not violated.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 19th day of March, 1980.