

The Second Division consisted of the regular members and in addition, Referee James F. Scearce when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Southern Pacific Transportation Company

Dispute: Claim of Employes:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated Rule 34 of the controlling agreement when Carman Apprentice L. D. Pinson was unjustly terminated from service on December 27, 1978, and following investigation held on February 1, 1979, was returned to service on February 16, 1979, but request to have the charges removed from his personal record were denied.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to remove the charges, which are shown as sustained, from Carman Apprentice Pinson's personal record and be replaced with "not guilty of charges" on letter dated February 16, 1979 (Exhibit "J", attached).

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 was employed as an Apprentice Carman on September 11, 1978. On October 23, 1978, while on duty and under pay, the Claimant was injured by an explosion unrelated but proximal to his work location. He was immediately out of service. By means of a letter dated December 27, 1978, the Claimant was terminated on the basis of not having demonstrated the aptitude to learn the Carmen trade. A grievance was instituted demanding an investigation. After several delays due to the Claimant's non-availability made necessary by surgical events related to the injury, the investigation proceeded on February 1, 1979, in the absence of the Claimant. The result of such investigation was to return the Claimant to duty February 16, 1979. The dispute herein results from the Carrier's refusal to expunge the charges of lack of aptitude from the Claimant's personnel record.

Essentially, the Carrier's judgment that the Claimant was incapable of learning the trade was made on the basis of work observed over a period of time worked from September 11 to October 23, 1978. The Carrier asserts authority to effect termination under Rule 39(g) which states, in pertinent part that "If within the first service period of 122 days an apprentice shows no aptitude to learn the trade, he will not be retained as an apprentice."

This Board is moved to conclude that the Carrier's actions were not supported by a showing that the Claimant had the opportunity to demonstrate such aptitude -- or a lack of it. We are mindful that Rule 39 (g) defines the trial or testing period as being "within the first service period of 122 days ..." (underlining ours), but we cannot ignore the event that rendered him unable to prove, or disprove, such capability. Without further comment, we order that the Claim be sustained as written.

A W A R D

Claim sustained.

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 6th day of May, 1981.