Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9031
SECOND DIVISION Docket No. 8798
2-ICG-SM-'82

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employes:

1. That the Illinois Central Gulf Railroad Company violated the controlling Agreement, particularly Rule 39, when they improperly and unjustly discharged from service on December 18, 1978 Sheet Metal Worker Apprentice F. E. Henry.

2. That accordingly the ICG Railroad Company be ordered to reinstate claimant (Mr. F. E. Henry) and compensate him for all time lost beginning December 19, 1978, the date he was improperly withdrawn from service.

   a. Make claimant whole for all holiday and vacation rights.
   b. Pay premium on health and welfare Travelers Policy GA 23000.
   c. Pay Illinois Central Gulf Hospital Association premium.
   d. Pay all sickness premiums under Provident Insurance Policy.
   e. Pay interest of 9% on all lost wages.
   f. Pay premium on Aetna Dental Policy.
   g. Reinstate claimant with all seniority rights unimpaired.

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.

The pertinent facts in this case are uncontested. Claimant entered the Sheet Metal Worker Apprentice Training Program on June 20, 1978 at the Carrier's Paducah Shop. On December 18, 1978, the Carrier discharged Claimant without first holding a formal investigation. At the time of his dismissal, Claimant had actually performed work for approximately 117 days. There were more than 122 scheduled work days between June 20, 1978 and December 18, 1978. If Claimant had worked all scheduled work days, he would have worked more than 122 days at the time of his dismissal.

The Carrier argues that it retained the discretion to drop the Claimant from the apprenticeship seniority roster before he actually performed work on 122 separate days. The Carrier relies on Section II(C) of the 1972 Apprentice Training Agreement which states:

> "During the first 122 work days of an apprenticeship, an apprentice may be dropped from the program if he does not show the aptitude or the desire to learn the trade. Such an apprentice will be considered resigned from service, but the company will consider him for other employment if a vacancy exists and he is qualified."

In this instance, the Carrier decided to drop Claimant from the apprentice program due to his unsatisfactory performance, poor attendance record and lack of initiative.

The Organization, on the other hand, contends Rule 39 of the applicable collective bargaining agreement was violated since Claimant was not provided with a formal investigation prior to his dismissal. According to the Organization, Claimant's right to a Rule 39 hearing vested once 122 scheduled work days had elapsed.

The issue presented to this Board is whether the words "the first 122 work days" in Section II(C) of the 1972 Apprentice Training Program refers to "days actually worked" or "potential days of work".

In interpreting the language of Section II(C) we must consider the purpose of the apprenticeship contract as well as the parties' past practice under the contract. The apprentice training program is designed to educate and train employes to become journeymen in a chosen shopcraft. To properly evaluate all candidates, the Carrier must be able to observe an apprentice, at work, for a minimum number of days. Also, an apprentice would be deprived of an opportunity to fully learn the skills of his craft if the number of actual days of work was shortened due to absences. Also, on this property, the Carrier has used actual days worked to determine when an apprentice may advance to the next plateau. The Organization has not objected to this method of computing days of work. The Carrier applied the same method of measuring days worked to determine Claimant's status in the program. Based on the intent of the apprenticeship program, the past practice of the parties on this property, and under the most reasonable interpretation of the Apprentice Training Agreement, we conclude that Claimant had not yet worked 122 days within the meaning of Section II(C). See Third Division Award No. 12523 (West) and Second Division Award No. 4130 (Anrod). Therefore, the Carrier could properly exercise its discretion to drop Claimant from the apprenticeship program on December 18, 1978.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.