

The Second Division consisted of the regular members and in addition Referee Thomas V. Bender when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company is violative of Rule 32 and 38 of the June 1, 1960 controlling agreement and unjustly dealt with and damaged Electrician Apprentice Donna L. Hall when they arbitrarily terminated her services with the Carrier on May 12, 1980.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician Apprentice Donna L. Hall continuous for eight (8) hours each and every day at the straight time rate, beginning May 19, 1980, and continuing until the violation has been corrected.

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 employees 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.

This case involves the termination of Apprentice Electrician D. L. Hall. Ms. Hall was employed on November 19, 1979 at the Carrier's repair facility in Houston, Texas. The Claimant worked as an apprentice from November, 1979 until April 25, 1980. On the later date Claimant sustained a head injury while on duty. She was hospitalized for four (4) days, remained under a doctor's care until May 17, 1980 when she was released for duty. However, the Claimant was terminated by the Carrier on May 12, 1980. The letter of termination stated:

"Effective immediately, your employment with the Missouri Pacific Railroad has been disapproved and your services with this company is (sic) terminated."

The letter was signed by the Carrier's Master Mechanic at Houston, Texas, F. R. Hickerson.

Throughout the organization's documentary support of the Claimant is the constant allegation that this case should be viewed under the discipline sections of the applicable agreement. This contention is wholly without merit. Rule 37(c) of the Apprentice Agreement provides:

"If within the first period of training an apprentice shows no aptitude to learn the trade, he will not be retained as an apprentice."

The Carrier treats this case as simply the dismissal of a probationary employee. No particular citation is required for the proposition that an employer has a free hand with an employee during the probationary period. Ms. Hall's case does not present the usual dismissal of a probationary employee. Rule 37(c) places some constraints on the Carrier's discretion to terminate an apprentice during the first period of the program. Rule 37(c) clearly speaks in terms of "aptitude to learn the trade". The issue to be resolved here is: Did D. L. Hall fail to show an aptitude to learn the electrical trade? Tersely stated, the answer to this question is No.

The Carrier's brief deals with two main propositions: (1) the Claimant's attendance record was not what the Carrier expected of a new employee, and (2) that Claimant showed no aptitude for the trade because of an, "Inability to step out of a scooter onto the floor of the shop without injury to (herself)." In the view of this Referee, such contentions fall short of the mark.

An employer provides work and an employee is obligated to faithfully perform the job for which employed. This means reporting for duty on time and staying to the end of the shift. This also means maintaining one's health and arranging one's personal life to avoid as much as possible, conflicts with the known work schedule. Perhaps Claimant has fallen down in this area. But, the Carrier should not have waited until five (5) months into the program to make its position on attendance known to the Claimant. As to the second issue, the Carrier's brief and exhibits fail to demonstrate a correlation between slipping on some oil on a rainy day and the Claimant's aptitude for railroad electronics. Several cases were presented in support of the Carrier's position. These awards do not control this case.

In Second Division Award 5054 (Johnson) this Carrier presented the Referee with evidence of the apprentice's poor performance and aptitude. See page 2 of that Award. No such evidence was presented here. Second Division Award 8621 (Dennis) was also offered in support of the Carrier's actions. In that case the apprentice-claimant was given a hearing by the Southern Pacific and the decision of the Southern Pacific was predicated on the evidence presented. Second Division Award 9031 (LaRocco) does not support carrier's actions. Apparently Referee LaRocco was provided with evidence of the apprentices, "...unsatisfactory performance, poor attendance record and lack of initiative". The Carrier here presented no such evidence. Such evidence may exist but it was not submitted and it is axiomatic that the cases here must be decided based on the record presented.

In this case the record will not support the action taken by the Carrier.

The Claimant shall be restored to the apprentice program at the same level she occupied on May 12, 1980. Since this was not technically a disciplinary termination and we find no basis for believing the Carrier's actions were grounded in malice or bad faith, no monetary damages are awarded.

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Award No. 9110
Docket No. 9216
2-MP-EW-'82

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of June, 1982.