

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12683
Docket No. 12676
94-2-93-2-55

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Norfolk & Western Railway Company

STATEMENT OF CLAIM:

- "1. That the Norfolk & Western Railway Company violated the spirit and intent of the June 1, 1984, Apprentice Agreement, but not limited thereto, when they unjustly terminated the employment of Apprentice Machinist, R.M. Noell, Jr. effective January 4, 1990.
2. That accordingly, the Norfolk & Western Railway Company be ordered to reinstate Apprentice R.M. Noell, Jr., to active service and allow him to resume his apprentice training with all his contractual 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.

Carrier maintains several equipment maintenance facilities in Roanoke, Virginia. One of those facilities is the Shaffers Crossing Shop, which includes locomotives and car shops at which Machinists are employed.

In 1984, the parties entered into an Apprenticeship Training Agreement for Machinists which provides for four basic phases of training, as follows: Phase I - Orientation; Phase II - Academic

Training; Phase III - Laboratory Training; Phase IV - On-the-job Training. Section 4, Paragraph (c), of that Agreement provides for not less than eight weeks nor more than 14 weeks of training in Phases I, II, III, except by mutual agreement. Section 3 provides that all such Apprentices are subject to a probationary period for the first 122 creditable (8-hour) days of training in Phase IV.

Claimant entered into the Apprentice Training Program on June 19, 1989. Claimant was disqualified on January 4, 1990 after review by those responsible for the training. This occurred after 93 days of creditable days of training in Phase IV. On January 19, 1990, the Organization filed a claim which took exception to Claimant's disqualification, and asked that he be returned to service. Carrier denied the claim on March 14, 1990. The claim was subsequently appealed up to and including the highest Carrier officer authorized to handle such matters.

The Organization's position is not that Carrier's decision was arbitrary and/or unjust; viz., that Claimant was performing as the parties desired. Rather, the Organization maintains that the disqualification letter was without advance notice or discussion.

A review of the Agreement between the parties indicates that it does not provide explicitly or implicitly for advance notice to apprentice program participants of their disqualification. Subsequent to the disqualification, Carrier's records supporting the disqualification were made available to the Organization for review. The Organization did not protest any of the reasons for disqualification; it restricted its objection to the method of notification.

Nothing on the record before the Board supports the Organization's claim concerning the method of disqualification. On the contrary, the record indicates that Claimant's disqualification was well grounded in his continuing inability to meet the standard of performance required by the apprenticeship program. Carrier's decision was within the provisions of the agreement. Accordingly the Board finds no basis for overturning Carrier's decision.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 6th day of April 1994.