

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25038

Docket No. 44656

99-1-97-1-S-6750

The First Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

(Gary Feldman

PARTIES TO DISPUTE: (

(Southeastern Pennsylvania

(Transportation Authority

STATEMENT OF CLAIM:

"Mr. Feldman seeks the Board to determine whether SEPTA can arbitrarily terminate Mr. Feldman under the labor agreement?"

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

On April 10, 1995 Claimant was hired by the Carrier as an Engineer Trainee. For approximately eight months thereafter Claimant received instructions and passed tests with respect to applicable rules and procedures qualifying him to progress to the "Training Train" portion of his training which he did on December 4, 1995. In that stage Claimant, under the direct supervision of an Instructor with the Carrier's Railroad Training Section, operated various types of equipment in non-revenue service. After completing that portion of his training Claimant began the final phase, On-the-Job Training (OJT), on February 12, 1996. Such training consisted of operating trains in

revenue service under all operating circumstances and again under the direct supervision of an Instructor from the Railroad Training Section. On March 29, 1996, before Claimant had completed OJT, the Carrier dropped him from the Engineer Training Program allegedly for failing to progress in his training.

The United Transportation Union, the Organization representing Claimant, filed a grievance protesting the Carrier's action. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes who denied it. Thereafter, Claimant retained counsel who on his behalf has brought the dispute to this Board for final and binding determination.

At the outset the Carrier raises several procedural objections to the claim in this case. However, this Board believes that the claim should be addressed on its merits and will proceed to do so.

Claimant maintains that he was dropped arbitrarily from the Engineer Training Program. Claimant alleges that during the OJT phase of his training he had no less than five separate Instructors each of whom gave him conflicting instruction and guidance as to how to operate a train in revenue service. Consequently, urges Claimant, when he followed the instructions of a prior Instructor he was poorly rated by a subsequent one. Claimant emphasizes that he was among the first employees to undergo OJT from several different Instructors who were nonunion employees. According to Claimant, the previous system of training was administered by a single individual who was a unionized, hourly paid employee. Also emphasizing that the Carrier dropped him from the Engineer Training Program before the scheduled completion of the OJT phase, Claimant maintains that the Carrier should have afforded him the opportunity to finish OJT and then to undergo a test to determine his ability to operate a train in revenue service.

The Carrier contends that it dropped Claimant from the Engineer Training Program only after he had demonstrated his inability to perform as a Locomotive Engineer.

The Carrier maintains that although Claimant had progressed in his training successfully to the Training Train stage, it was there that Claimant began to perform poorly with respect to train handling. The Carrier emphasizes that normally a trainee in that phase is given fifteen work days to demonstrate proficiency, but Claimant

required thirty-five days to demonstrate the minimum level of skill to progress to the OJT phase of training.

The Carrier contends that it afforded Claimant the additional training time because he was among the first trainees under the new system of nonunion Instructors. The Carrier alleges that had Claimant trained under the old system he would have been dropped from the training program prior to entering the OJT phase due to his marginal performance.

The Carrier also argues that after Claimant entered OJT he developed a pattern of performing poorly, improving somewhat after individualized instruction but regressing shortly thereafter to the previous level of poor performance. The Carrier notes that on March 28, 1996, the day before Claimant was dropped from the program, he was given very poor ratings by his Instructor. In view of these factors, the Carrier asserts, Claimant's removal from the Engineer Training Program was justified and appropriate.

The Instructor evaluations of Claimant during OJT fully support the Carrier's contention that Claimant would tend to perform poorly with respect to a given task, improve somewhat with instruction but regress shortly thereafter to a poor level of performance. Moreover, many of Claimant's errors and/or omissions with respect to train operations constituted violations of the Carrier's safety rules which would have subjected a qualified Engineer to disciplinary action. These factors fully supported the Carrier's conclusion that Claimant was not progressing successfully to the point where he could be entrusted with the operation of a train in revenue service without direct oversight by an Instructor. We believe that under these circumstances the Carrier was completely justified in removing Claimant from the Engineer Training Program.

We do not believe the Carrier was required to allow Claimant to complete OJT and to undergo a test to demonstrate his proficiency in train handling. It must be borne in mind that in the OJT phase of training Claimant was operating trains in revenue service. That means Claimant was operating trains with passengers on board. In view of Claimant's demonstrated lack of proficiency the Carrier was justified in concluding that Claimant's continued operation of trains in revenue service, even under direct supervision by an Instructor, could endanger the public.

The Board is not unsympathetic to Claimant's plight. The record reflects a sincere desire and commendable effort on Claimant's part to become an Engineer in the Carrier's service. However, the record also reflects that Claimant demonstrated a lack of ability to perform as or to develop the skills necessary to become an Engineer. Moreover, when Claimant was dropped from the training program he was offered the opportunity to continue training for the position of Conductor. Apparently, Claimant declined to do so on the ground that he wanted to become an Engineer.

In the final analysis we must conclude that the Carrier's action dropping Claimant from the Engineer Training Program on March 29, 1996 was not arbitrary or otherwise improper.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 21st day of June 1999.