

Award No. 1055

Docket No. 1017

2-MP-CM-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That on and since August 14, 1943, the carrier has been persistent in violating the controlling agreement and particularly Rules 26 and 116 by the improper employment of Carrol Briley as a passenger truck carman at Ranken Tract, St. Louis, Missouri.

2. That in consideration of the aforesaid violation the carrier be ordered to—

- (a) Discontinue the services of Carrol Briley as passenger truck carman.
- (b) Delete the name of Carrol Briley from carmen's seniority roster, Division No. 6.

EMPLOYEES STATEMENT OF FACTS: On May 5, 1942 C. Briley was employed as carman helper at Ranken Tract, St. Louis, serving in that capacity until April 26, 1943, when he was given a military leave of absence to report to Jefferson Barracks for physical examination prior to induction into United States Army. Failing to enter military service, instead of reporting back as car helper at Ranken Tract passenger yard he secured employment in an outside industry and no more was heard from him until the early part of August, 1943, when he went to Master Mechanic Whalen's office asking for his former helper's job back. Master Mechanic Whalen advised him that account of not reporting back to service he had removed his name from the helper's seniority roster, therefore, he could not comply with his request, other than to rehire him as a new helper. This offer was not acceptable to Briley but he advised Master Mechanic Whalen that he would accept a mechanic's job, which resulted in his employment as a carman, with seniority date of August 14, 1943.

POSITION OF EMPLOYEES: In presenting this case for the consideration of the Honorable Board in employees desire to first direct attention to the applicable rules of controlling agreement, viz., Rules 26 and 116 thereof, as set forth below:

Assignment of Work

Rule 26. (a) None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except foremen at points where no mechanics are employed.

Carmen's Special Rules—Qualifications

Rule 116. Any man who has served an apprenticeship, or who has had four years' experience as a carman, and is capable of performing car work, and who with the aid of tools with or without drawings can lay, build or perform the work of his craft or occupation, in a mechanical manner within a reasonable length of time, may qualify as a carman.

soever on the instant case and it is noted that the employes make no reference thereto in their notice to the Board dated January 3, 1945 of their intention to file a submission involving this case. It is, however, noted that the employes cite Rule 26 of the July 1, 1936 agreement to support their contention. This rule reads:

“ASSIGNMENT OF WORK: Rule 26. (a) None but mechanics or apprentices regularly employed as such shall do mechanic's work as per special rules of each craft, except foremen at points where no mechanics are employed.

This rule does not prohibit foremen in the exercise of their duties to perform work.”

It is noted that the rule provides:

“None but mechanics or apprentices regularly employed as such shall do mechanic's work **as per special rules of each craft, * * ***”
(Emphasis supplied.)

One of the special rules of the carmen's classification of work is that governing the classification of work for truckmen.

There is no question of Mr. Briley's qualification to perform the duties of the job to which he is assigned—passenger car truckman—and the carrier does not feel that his employment as such is contrary to the intent and application of either Rule 26 or Rule 116 which were cited by the employes to support their contention.

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.

The parties to said dispute were given due notice of hearing thereon.

C. Briley held no employe relation at the time he was hired as a mechanic, and had no previous experience which qualified him for this position under the rules.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 21st day of March, 1945.