

Award No. 2338
Docket No. 2103
2-MKCSJA-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

MILWAUKEE-KANSAS CITY SOUTHERN JOINT AGENCY

**SYSTEM FEDERATION NO. 3, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

DISPUTE: CLAIM OF EMPLOYEES: Claim of employes that within the meaning of Rule 78 of the controlling agreement, T. L. Haney is not entitled to seniority as Carman and request that his name be removed from seniority roster as Carman on the Milwaukee-Kansas City Southern Joint Agency.

CARRIER'S STATEMENT OF FACTS: Rule 78 of the current agreement, copy of which is on file with this Division, provides:

"Qualifications

"Any man who has served an apprenticeship, or who has had four (4) years practical experience at Carman's work, and who, with the aid of tools with or without drawings, can lay out, build, or perform the work of his craft or occupation in a mechanical manner shall constitute a Carman."

T. L. Haney, carman helper, with seniority date of March 15, 1944, was upgraded to carman on the advent of the 40 hour week September 1, 1949. On June 10, 1953, Mr. Haney was promoted to car foreman. On October 7, 1953, the employer issued a service letter to T. L. Haney showing that on September 1, 1953, he completed 4 years as upgraded carman and he was given a seniority date of September 1, 1953, as carman and his name so shown on the seniority roster published January 1, 1954.

Local committee took exception to this seniority date and has insisted that Haney's name be removed from roster of carmen.

POSITION OF CARRIER: It is our position that Mr. Haney is properly carried on carmen's seniority roster for the reason that he has met the provisions of Rule 78 of the controlling agreement as he has had four (4) years practical experience at carman's work.

form the work of his craft or occupation in a mechanical manner, shall constitute a carman."

T. L. Haney did not have on September 1, 1953, the required four years' practical experience at carmen's work as referred to in the rule.

In view of the foregoing, the Honorable Board Members of this Division should sustain the claim of the employes.

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.

It is the contention of the employes that within the meaning of Rule 78 of the parties' controlling agreement T. L. Haney is not entitled to seniority as a carman. In view thereof they request that carrier remove his name from its seniority roster for carmen.

Rule 78 provides as follows:

"Any man who has served an apprenticeship, or who has had four (4) years' practical experience at carmen's work, and who, with the aid of tools, with or without drawings, can lay out, build, or perform the work of his craft or occupation in a mechanical manner, shall constitute a carman."

The requirements of this rule are primarily for the protection of the carrier in that they secure to it employes as carmen who are basically qualified to do that class of work, although seniority is involved.

Haney's seniority as a carman helper dates from March 15, 1944. On September 1, 1949 he was temporarily upgraded to a carman and worked in that capacity for three (3) years, nine (9) months and nine (9) days until June 10, 1953 when he was promoted to a car foreman, a position not covered by the parties' controlling agreement. On October 7, 1953 carrier notified Haney it considered he had completed four (4) years of practical experience at carman's work and, on its January 1, 1954 carmen's roster, showed Haney with a seniority as a carman as of September 1, 1953. The local committee took exception to this seniority, insisting Haney's name should be removed from the carmen's roster. Its contention in that regard is based on the claim that Haney has never had the "four (4) years' practical experience at carman's work" that Rule 78 provides he must have before he can become a carman.

It will be noted that Rule 78 does not provide where or when such "practical experience" must be had. Neither does it specifically require that such experience must be had while the man qualifying is an employe covered by the parties' agreement. But even assuming the latter is what the parties intended, we think Rule 27 would provide an exception thereto. It provides that foremen, in the exercise of their duties, may perform mechanics' work. Whether or not Haney performed sufficient carmen's work as a car foreman, after he was promoted thereto on June 10, 1953, to complete his four (4) years of practical experience at doing such work was a matter for the carrier as it has the responsibility of determining whether or not an employe has met the requirements of Rule 78. Unless its action in that respect can be said to be either arbitrary, unreasonable or capricious it is final and binding on all the

parties affected thereby. We find nothing of that character in the record before us. In view thereof we approve the action taken by the carrier.

AWARD

Claim of the employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1956.

DISSENT OF LABOR MEMBERS TO AWARD No. 2338

The record clearly discloses that Haney had had but three (3) years, nine (9) months and nine (9) days practical experience at carmen's work, whereas Rule 78 requires four (4) years' practical experience at carmen's work.

The majority attempts to show that Rule 27 provides an exception to Rule 78, stating that Rule 27 "provides that foremen, in the exercise of their duties, may perform mechanics' work." The exact wording of Rule 27 is "This rule does not prohibit foremen in the exercise of their duties to perform work." The rule does not state that foremen may perform mechanics' work nor does the rule specify the type of work that a foreman is not prohibited from performing. There is no evidence in the record to show that Haney performed any mechanics' work at all while he was a foreman.

The language of Rule 78 is sufficiently explicit and the record presents no proof that Haney met the requirements of the rule; the action of the carrier in placing Haney's name on the seniority roster was arbitrary and we are constrained to dissent from the findings and award of the majority.

George Wright
R. W. Blake
C. E. Goodlin
T. E. Losey
Edward W. Wiesner