

Award No. 3134

Docket No. 2940

2-B&M-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That the abolishment of the carman-millman position at East Deerfield under date of February 21, 1957, and reposting the job under Vacancy Notice No. 10, dated February 21, 1957, as an assistant wreck crane engineer, millman and carman position, is a violation of the current agreement.

2. That under the current agreement, the assistant wreck crane engineer, millman and carman position advertised for bid under Vacancy Notice No. 10, requiring a successful bidder to have a 4th class engineer's license, also a diesel license for the State of Massachusetts, is in violation of Rule 109 of the current agreement at East Deerfield, Massachusetts.

3. That this Vacancy Notice No. 10 be withdrawn, also that the Abolishment Notice dated February 21, 1957, in so far as the millman position is concerned, be cancelled.

EMPLOYEES' STATEMENT OF FACTS: On February 21, 1957, the following Abolishment Notice was posted on the Bulletin Board: (See Exhibit A.)

"East Deerfield, Mass.
February 21, 1957.

ABOLISHMENT NOTICE

Effective at the close of work—February 28, 1957 assignments held by the following employees will be abolished:

POSITION OF CARRIER: The duties of millman under the carmen's craft includes the operation of power tools used for the cutting and shaping of wood to be used on locomotives, cabooses, freight and passenger cars.

There is no separate rostered classification of millman. The work belongs to rostered carmen in the carmen's seniority district.

The issue presented on the property in this dispute was whether or not it is permissive for the carrier to combine carman (including milling) work with that of wreck crane operator. The question has been decided by this Division adverse to employees' contention only recently. Second Division Award No. 2603 was "Denied" by Referee Curtis G. Shake on September 11, 1957.

Therefore, the only possible remaining question is whether or not it was permissive to combine milling work in a carman's assignment.

Provided the positions are properly bulletined, the answer can only be in the affirmative. There is no schedule classification of "millman", separating such work or position from that of carman, much less is there any separate roster. In fact, the incumbent of the position prior to rebulletining was Guy C. Rayner, a rostered carman, see carrier's Exhibit A—on the same carmen's roster and seniority district as Wreck Crane Operator-Carman R. W. Ethier, whose assignment to the newly combined position is being protested.

The employees, in letter from former General Chairman W. R. Hale, dated June 13, 1957, corroborate the carrier's position that carman and millman are synonymous, wherein it is stated in part:

"We have always contended that a millman-carman position belongs to the employees in the Carmen's Craft, in accordance with their seniority in that craft. . . ." (Exhibit "C" attached.)

In addition, please see carrier's Exhibit B wherein the employees have recognized for years the classification of—

"Millman—Wreck Crane Engineer"

at Mechanicville in this same Western Car District without protest.

This entire dispute and protest has been predicated upon the contention that the position of wreck crane operator and a carman's job could not be combined as one position. Of course, such argument has been ruled to the contrary when Referee C. G. Shake denied an identical claim in Second Division Award No. 2603 between the instant parties.

Carrier submits the Board has no alternative but to deny this protest on the basis of the decision rendered in Award No. 2603. This is supported by the clear intent of the parties as shown in carrier's Exhibits A, B and C submitted herewith.

FINDINGS: The Second 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.

The question for determination here is whether or not Rules No. 109 or 112 were violated when the carrier abolished a job held by Mr. Ethier under a bulletin description of "Carman Wreck-crane Engineer", and posted for bidding a new job described as "Ass't Wreck Crane Engineer and Millman and Carman" which was awarded Ethier on Feb. 28, 1957.

An earlier posting of Ethier's job as "Carman and wreck crane engineer" was challenged by the organization and was decided in favor of the carrier by our Award No. 2603, dated September 11, 1957, wherein it was held that "the parties will be bound by the construction which they have mutually placed on it (the agreement) over a long period of time."

The only difference between that case and the present one is that here the duty of millman has been included in the bulletin. In these circumstances, consistency urges a denial award.

AWARD

The grievance is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: H. J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March, 1959.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 3134 AND 3135

The question for determination is inaccurately stated in the findings of the majority. The question for determination is whether Rules 109 and 112 include engineers. A reading of Rule 109 discloses no mention of engineers and Rule 112 specifically excludes engineers. The majority has made an abortive attempt to revise these rules. The Board is not empowered to revise rules nor is it empowered to uphold the carrier in doing so unilaterally. The manner in which agreement rules may be revised is set forth in Section 6 of the Railway Labor Act.

The majority in the erroneous findings have attempted to justify the action taken on the theory that consistency urges a denial award because Award 2603 was denied. Award 2603 was denied on the basis of estoppel but the instant violation was immediately protested and claim should have been sustained.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner