

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That Seaboard Coast Line Railroad Company violated provisions of the controlling agreement by employing Mr. G. M. Poole as a Carman Painter on June 30, 1972.
2. That Mr. G. M. Poole's name be removed from the Carman Painter's seniority roster.
3. That Carrier be ordered to compensate a qualified Carman Painter eight (8) hours each day, forth (40) hours each week at time and one-half time rate, beginning with June 30, 1972 and continuing until the violation is corrected. The compensation claimed be equally divided among the below listed qualified Carman Painters:

- | | |
|------------------|--------------------|
| 1. B. P. Weeks | 5. E. E. Smith |
| 2. J. A. Deyorio | 6. R. A. Gallagher |
| 3. L. A. Waddell | 7. C. A. Parramore |
| 4. G. R. Jones | 8. F. Berry |
| 9. C. R. Hall | |

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.

Mr. G. M. Poole was employed as a Carman-Painter on June 30, 1972. On August 5, 1972, the instant claim was filed, as set out in the Claim of Employees. G. M. Poole had eight years of painting experience in outside industry at the time of his employment by the Carrier on June 30, 1972.

The Organization contends G. M. Poole does not meet the requirements of a Carman-Painter under Rules 15, 26(a), 46(w), 99 and 100 of the Agreement.

Rule 99 states in pertinent part:

Carman Special Rules:

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

Rule 15 provides, "There shall be four roster-divisions of Carmen's craft," a "Painter" is one of these roster divisions. They have separate seniority in a class and craft of their own.

Rule 46(w) provides the schedule for regular apprentices showing a division of time on various classes of work as a guide to be followed as closely as conditions will permit:

"(w) Painter Apprentice

- 4 months freight car painting
- 6 months color room and mixing
- 10 months general locomotive painting
- 12 months passenger car washing, scrubbing, sanding, and painting
- 16 months lettering, striping, varnishing and layout and design as shop affords."

The Organization contends that G. M. Poole is not a qualified Carman Painter under the terms of the Agreement. They contend he has not had the required apprenticeship training. They contend further that he has not had the requisite "Four years practical experience at Carmen's work" (Rule 99). The Organization insists that the four years practical experience must be in the railroad industry; that the word Carman is itself a railroad industry term; and that there is no place except in the railroad industry itself that a journeyman can gain experience in painting freight cars, passenger cars and locomotives.

The Carrier contends that the Agreement was not violated. The Carrier points out that there were no furloughed painters on the seniority roster, and that of the two Painter Helpers available to be set up to Painters, one declined and the other was medically restricted. The Carrier contends that there is positively no requirement or provision in Rule 99, quoted above, or Rule 100, Classification of Work, that a journeyman mechanic, in the present case a Journeyman Painter, must secure the required training or experience

in the railroad industry. The Carrier further contends that the long established practice on the property supports this view.

Both sides cite to us a number of cases that support their positions: and both sides ably distinguish each others cases. For example, the Carrier cites Award 967, involving the Machinists trade and this same carrier, which considered the issue of railroad experience versus outside industry experience. In Award 967, the Machinists Organization argued that an auto mechanic with more than four years experience in outside industry did not have the requisite experience in the machinists trade to qualify him to work on railroad equipment in the Locomotive Department. The Board in that case found no violation of the Agreement. The Organization cites, among others, Award 3375 involving the Union Pacific Railroad Co. and the status of a Carman-Upholsterer. The Board in that case found that the employe's experience as an upholsterer in outside industry at the time of his employment had no bearing upon the requisite qualification under a rule similar in language to Rule 99 of the instant case.

As evident from the conflicting interpretations given language similar to Rule 99, in the Awards cited to this Board, we find that the language of Rule 99, as it relates to the entirety of the Agreement, is capable of bearing the interpretation of the Organization and is capable of bearing the interpretation of the Carrier as well. We thus find Rule 99 to be ambiguous. It is settled beyond question that where the contract language is ambiguous, the past practice of the parties may properly be used to give meaning to the ambiguous language of the Agreement of the parties. The Carrier has consistently interpreted "four years practical experience at carman's work" to mean four years experience in the trade of a painter. In accordance with the Carrier's consistent interpretation of the Agreement, and Rule 99, the Carrier has in Exhibits C-9 and C-10 given the names of 15 employes over the past thirty years who were placed on the Painters' Seniority Roster on the date of first service, and none of the employes listed had any previous railroad painting experience. Each of these Carmen Painters employed over the 30-year-period had their names placed on the Painter's Seniority Roster, and the Union representatives are furnished copies of all seniority rosters of their craft. Rule 15 requires that seniority lists be posted on bulletin boards and allows that the lists may be protested during the year in which the roster is posted. The Union made no protest or complaint concerning any of the fifteen Carmen Painters hired over the thirty-year-period. We find the practice on the property is so totally well established that the Organization cannot reasonably claim a lack of knowledge of such a practice. We therefore must deny the claim.

A W A R D

Claim denied.

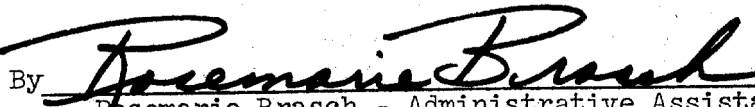
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Award No. 6965
Docket No. 6862
2-SCL-CM-'75

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of November, 1975.