

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International
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(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That the Missouri-Kansas-Texas Railroad Company violated the controlling Agreement when furloughed Carman M. D. Robinson was working as Laborer and hired by the Carrier as Sheet Metal Worker on August 4, 1975 and was given seniority date on Sheet Metal Worker's Seniority Roster of August 4, 1975.
2. That accordingly, the Missouri-Kansas-Texas Railroad Company be ordered to remove the name of Laborer M. D. Robinson from the Sheet Metal Workers' Seniority Roster and place him at the bottom of the Sheet Metal Workers' Apprentice Seniority Roster.

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.

By its claim the Organization is contending that Carrier violated the provisions of Rule 62 of the Agreement between the parties when it placed Carman Robinson on the Sheet Metal Workers' Seniority Roster without the requisite four years' experience. The Organization further requests that Carman Robinson's name be removed from such seniority roster and placed at the bottom of the Sheet Metal Workers' Apprentice Seniority Roster.

The pertinent provisions of Rule 62 read:

"Any man who has served an apprenticeship or has had four (4) or more years' experience at the trade, who is qualified and capable of doing Sheet Metal Workers' work ... shall constitute a Sheet Metal Worker."
(Underscoring added)

Carrier takes the position that Carman Robinson is qualified because he has had more than four years' experience outside the railroad industry as required under Rule 62

"(w)hich included welding, both electric and acetylene; installation and repairs to cooling and exhaust systems; general motor and tune-up work; front end work; installation of gas, water, air and hydraulic lines; general shop work which included electric and acetylene welding and metal working."

Carrier contends that if Rule 62 were ambiguous, such ambiguity has been resolved in Carrier's favor because the Organization has accepted its interpretation for the past 25 years without protest, and that such past practice is binding on the parties as a mutually acceptable interpretation of Rule 62.

The Organization takes the position that the term "four (4) or more years' experience at the trade" means "four (4) or more years' experience in the Sheet Metal Workers' Craft," and that an apprenticeship as a Sheet Metal Worker was a precondition to being placed on the Sheet Metal Workers' Seniority Roster. Experience outside the railroad industry or in another craft cannot be considered.

The Board finds that an argument may be made that the negotiators of this provision may have intended that experience "at the trade" meant railroad experience as a Sheet Metal Worker. To that extent the rule is ambiguous. As such we look to past practice and find in this record that the rule has been uniformly interpreted, as Carrier contends, for the past 25 years without protest.

Second Division Award No. 6965 involved a virtually identical situation with Carmen. We quote the pertinent portion:

"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 practice 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 employees over the past thirty years who were placed on the Painters' Seniority Roster on the date of first service, and none of the employees 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."

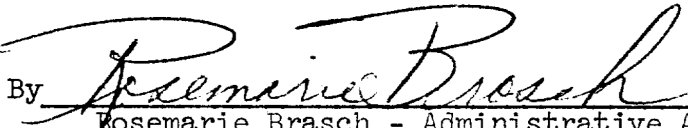
On the basis of the record before us, we shall deny the claim.

A W A R D

Claim denied.

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 21st day of April, 1978.