

Award No. 1490

Docket No. 1410

2-B&M-CM-'51

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES: (1) That the carrier violated the controlling agreement, particularly Rules 26 and 108 when it assigned J. Issa to perform carmen's work at Dover, New Hampshire, on September 3, 1949.

(2) That accordingly, the carrier be ordered to compensate Carman J. Corain for September 3, 1949, in the amount of 8 hours at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: On September 3, 1949, Carman C. N. Pike, whose regularly assigned hours were 7:00 A. M. to 12:00 Noon—1:00 P. M. to 4:00 P. M., Tuesday through Saturday, with Sunday and Monday as rest days, was assigned to temporarily fill the position of a foreman.

J. Issa, a freight house department employe, was assigned to fill the position regularly held by Carman C. N. Pike.

Carman J. Corain, whose regularly assigned hours were 7:00 A. M. to 12:00 Noon—1:00 P. M. to 4:00 P. M. Monday through Friday, with Saturday and Sunday as rest days, was available for filling Carman C. N. Pike's position as a carman on September 3, 1949.

This dispute has been handled in accordance with the agreement effective April 1, 1937 as subsequently amended, up to and including the highest carrier officer to whom such matters may be appealed with the result that this officer has declined to make a satisfactory settlement.

POSITION OF EMPLOYES: It is submitted that within the meaning of Rule 108 reading in part:

"Any man who has served an apprenticeship or who has had four (4) years' practical experience at carmen's work . . . shall constitute a carman."

the carrier is without authority to assign any person not meeting the above requirements to perform carmen's work.

It is further submitted that within the meaning of Rule 26 reading in pertinent part:

SUMMARY.

Carrier has indicated clearly above:

- (1) That Issa is a recognized qualified carman.
- (2) That Issa was occupying a status of a furloughed (unassigned) carman on September 3, 1949.
- (3) That the required carman's work was performed by Issa on a day which was not a part of any assignment.
- (4) That the use of furloughed (unassigned) employees to perform temporary work has been recognized and accepted on this property both by Board decision and practice.
- (5) That, by virtue of this accepted use of furloughed (unassigned) employees and Rule 1 (n) it was proper to use Issa on September 3, 1949.
- (6) That part (2) of the employees' claim is exorbitant and unsustainable.
- (7) That there was no violation of the controlling agreement.

The claim should be denied.

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 employees 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.

In the instant case the employees contend the employment of J. Issa as a carman at Dover, N. H., on September 3, 1949, was in error because he lacked the experience necessary to qualify him as a carman under the provisions of Rule 108 of the controlling agreement, reading in part as follows:

"Any man who has served an apprenticeship or who has had four (4) years' practical experience at Carmen's work * * * shall constitute a carman."

The record submitted by the parties indicates that J. Issa was employed as a carman prior to September 3, 1949, as follows:

7-15-47 to 8-23-47

2- 2-48 to 5- 7-48

7-12-49 to 8-27-49

Based on this record the amount of time J. Issa was employed at carmen's work is not sufficient to meet the requirements of Rule 108, and the contentions of the employees in this respect must therefore be upheld.