

**Award No. 2459**

**Docket No. 2263**

**2-B&M-CM-'57**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

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

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**PARTIES TO DISPUTE:**

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

**BOSTON AND MAINE RAILROAD**

**DISPUTE: CLAIM OF EMPLOYEES:**

That Herve Verville, Painter Helper, should be compensated in the amount of eight (8) hours per day at straight time rate for all work performed by Carmen Helpers Wallace Daley and Charles Odette on January 10, 11, 12, 13, 14, 1955 and thereafter as long as they perform work he is entitled to.

**EMPLOYEES' STATEMENT OF FACTS:** The carrier maintains at Concord Freight Shop the following seniority roster:

- 1 Freight Car Repairman Seniority Roster
- 1 Car Helpers' Seniority Roster
- 1 Painters' Freight Seniority Roster
- 1 Painter Helpers' Seniority Roster

Herve Verville is the only painter helper on the painter helper's roster. Charles Odette and Wallace Daley are on the carmen helpers' roster. No attempt was made to contact Herve Verville, the furloughed painter helper, and have him return to work. He was available, able and willing to work, if called to do so.

Charles Odette and Wallace Daley were used to scrape off paint, remove nails, etc., on various cars preparatory to painting on January 10, 11, 12, 13 and 14, 1955 and thereafter.

This dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

The agreement effective April 1, 1937, as subsequently amended, is controlling.

**an employe with 7 years' rating performing the same service as the man furloughed had been performing." (Emphasis ours.)**

The carrier does not agree that the painter helper was performing this work exclusively in the past. However, the carrier wishes to bring out that even the petitioner recognizes that this claim is untenable, otherwise such a statement would not be presented.

Furthermore, even if the carrier were to use a painter helper exclusively for this work, the petitioner would certainly be in a position to present a claim on the basis of a carman helper due to the crystal clear wording of the rule in question.

For the record, please be advised that no work has been taken from the carmen's organization and given to someone outside of the organization. Both the claimant and the men used are represented by the same carmen's organization.

If the work had been given to the claimant (which would have been contrary to the rule), it would have actually resulted in a reduction of one carman helper anyway. Therefore, the petitioner cannot argue that this would have created more work for the men represented by the carmen's organization.

In conference the carrier's representative mentioned to the general chairman of the carmen's organization that we would be willing to agree to some arrangement in the future so that painter helpers could do this work, if a letter would be presented to the carrier for a change to that effect. However, the general chairman stated he was not interested in such a settlement but was interested only in a monetary settlement.

For the record, the carrier will readily agree to any reasonable offer, if it is the petitioner's pleasure, in order to have painter helpers perform the work in question. However, this would necessitate a change in the rule due to the clear wording of Rule 111 Supra.

Due to the fact that that the representatives of the men in question have not been injured, and that the rule has been interpreted properly, the carrier respectfully submits to your Honorable Board that there cannot be any possible justification for any money settlement in this claim.

**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.

At Concord Freight Shop two seniority rosters are maintained for helpers to the carmen craft, one designated as car helpers' roster and one designated as painter helpers' roster. Claimant holds seniority on the painter helpers' roster and on the dates specified in the claim was furloughed. On those dates two helpers on the car helpers' roster were used to prepare box cars for painting.

There is but one classification of work rule for carmen helpers, Rule 111, and, since it is entitled Carmen Helpers, the carrier contends that the work specified belongs to those helpers on the car helpers' roster. We note that there is also but one classification of work rule for carmen, Rule 109, although there are four seniority subdivisions in the carmen craft. Certainly

those craftsmen have seniority preference to the performance of the work specified in Rule 109 on the basis of the subdivision in which they hold seniority.

We see no reason for a different interpretation of Rule 111. Accordingly we find that a helper on the painter helpers' roster has a seniority preference to work of a painter helper specified in Rule 111, even though the work has been and may be performed by other helpers when no painter helpers are available. We also find that the work here involved was properly the work of painter helpers.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1957.