

Award No. 3135

Docket No. 2939

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 under the current agreement Carman R. Ethier was improperly awarded legal portion of Vacancy No. 10, dated February 21, 1957, in place of Carman F. H. Charest, a senior employe.

2. That the legal portion of the position awarded to Carman Ethier be awarded to Carman Charest.

EMPLOYEES' STATEMENT OF FACTS: On February 21, 1957, Mr. Lambert posted Vacancy Notice No. 10 for an assistant wreck crane engineer and millman and carman. (See Exhibit A.)

February 26, 1957, Carman F. H. Charest and Carman Rollin W. Ethier made application for the position. (See Exhibits B and C.)

On February 28, 1957, Foreman A. J. Lambert awarded the carman's job to Rollin Ethier, same to take effect March 1, 1957. (See Exhibit D.)

Under date of February 26, 1957, Foreman Lambert notified Carman Charest that in order to bid on Vacancy No. 10, he was required to have a Massachusetts State 4th Class Engineer's License, and a Massachusetts State Diesel License, to cover the job; and if he did not have same, the bid would be disallowed. (See Exhibit E.)

POSITION OF EMPLOYEES: Rule 13 of the current agreement reads in part as follows:

"When new jobs are created or vacancies occur in the respective crafts, the oldest employe in point of service shall, if sufficient

“We have always contended that a millman-carman position belongs to the employes 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 employes 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 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 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 were given due notice of hearing thereon.

Our Award No. 3134, deciding Docket No. 2940 is controlling in this corollary case.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry 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 the claim should have been sustained.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner