

Award No. 5403
Docket No. 5251
2-NYNH&H-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the New York, New Haven & Hartford Railroad Company hereinafter referred to as the Carrier, illegally placed the name of C. Vollero, promoted from Lye Vat Attendant, on the carman's painter's roster, at the Work Equipment Shop, New Haven, Conn., with a date of January 4, 1965.

2. That accordingly the carrier be ordered to remove the claimant's name from the Work Equipment Shop Carman-Painter's Roster, until after he has completed eight (8) periods of 130 days, 1040 days at carmen's painter's work.

EMPLOYEES' STATEMENT OF FACTS: Through mutual agreement the time limits for appeal on this dispute have been extended for sixty (60) days, as attested to by Exhibits "A" and "A1" attached.

C. Vollero was hired as a car cleaner in the New Haven Passenger Car Department on 3-2-1964.

He was promoted, to cover the temporary vacancy of painter, on 3-3-1964.

He was furloughed on 5-29-1964.

Subsequent to his furlough he accepted a Lye Vat Attendant's position at the Work Equipment Shop, New Haven, Conn., on 6-1-1964. Because of the death of A. Cucurullo, painter, a permanent position for a painter was created in the Work Equipment Shop, New Haven, Conn., on 12/25/64.

This position was bulletined for bid on 12/28/64. (Copy of bulletin notice attached and marked Exhibit "B.")

No bids were received on this vacancy, nor, were there any painters available to be called under the provisions of Rules 24 and/or 26 of the current agreement.

penters' work, and who with the aid of tools, with or without drawings, can lay out, build or perform the work of his craft or occupation in a mechanical manner, shall constitute a Carman or Ship Carpenter." (Emphasis ours.)

cannot possibly be construed as applying to a painter of roadway maintenance equipment. Such language could only apply to employees engaged in the so-called "metal trades."

Rule 107, Classification of Work, refers to Carmen's work as

"* * * building, maintaining, dismantling * * * painting, upholstering and inspecting all passenger and freight cars * * * and * * * painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint on passenger equipment; all other work generally recognized as painters' work under the supervision of the locomotive and car departments * * * and * * * including the following classification in shipyard: Ship Carpenters to include Carpenters, Joiners, Caulkers, Planing Millmen, Canvas Men (Sailmakers), Riggers, and Steering Gear Rigger Men; and Painters." (Emphasis ours.)

We respectfully submit that Mr. Vollero is entitled to a seniority date of January 4, 1965, the date on which his service began as painter in the Work Equipment Department, and request the Board to so find.

All of the facts and evidence contained herein have been affirmatively presented to the Employees.

Carrier does not request an oral hearing, however, in the event the Employees request hearing, Carrier desires the opportunity to be heard as well.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Petitioner contends that Carrier violated effective Agreements between the parties when it promoted C. Vollero from Lye Vat Attendant to the Carman-Painter's roster at the Work Equipment Shop, New Haven, Connecticut with a seniority date of January 4, 1965. Petitioner urges that the Carrier be ordered to remove the employee's name from the Carman-Painter's Roster at the Work Equipment Shop until said employee has completed eight (8) periods of 130 days, 1040 days, at Carman-painter's work.

Carrier avers that Mr. Vollero is entitled to a seniority date of January 4, 1965 in accordance with Rule 28 of the Agreement between the parties even though he did not have four years prior experience as required by Rule 106 of said Agreement. Furthermore, Carrier contends that the Agreement of August 1, 1953 between Petitioner and the Eastern, Western and Southeastern

Carriers is not applicable because it dealt only with the upgrading of Carman Helpers to Carman (Mechanics).

The fundamental facts are not in issue. The position of painter became vacant through the demise of the only painter in the Work Equipment Department. Said vacancy was duly advertised and no bids were received by the Carrier. Moreover, no furloughed painters were available. Mr. Vollero applied for the position, and he was placed on the painter's roster with a seniority date of January 4, 1965.

The pertinent language from the two controlling agreements must be reviewed.

Rule 106 of the basic Agreement between the parties states in part that "any man who has served an apprenticeship, or who has had four (4) years practical experience at Carman's work or Ship Carpenters' work, and who with the aid of tools, with or without drawings, can lay out, build or perform the work of his craft or occupation in a mechanical manner, shall constitute a carman or ship carpenter."

Article III of the June 1, 1953 Agreement between petitioner and Eastern, Western and Southeastern Carriers provides in part as follows:

"In the event of not being able to employ carmen with four years' experience who are of good moral character and habits, regular and helper apprentices will be advanced to carmen in accordance with their seniority. If more men are needed, helpers will be promoted. If this does not provide sufficient men to do the work, men who have had experience in the use of tools may be employed. They will not be retained in service as carmen when four-year carmen as described above become available." (Emphasis ours.)

Analysis of the applicable language in these Agreements discloses no ambiguity. Therefore, we must conclude that it was proper for the Carrier to use Mr. Vollero as a painter in the Work Equipment Department in the absence of available employes with four (4) years practical experience, but that Carrier violated Rule 106 of the basic Agreement by placing said employe on the painter-carmen seniority roster until such time as he acquired the requisite experience for such classification. Accordingly, the claim will be sustained.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1968.

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