

Award No. 6026
Docket No. 5804
2-PC(NH)-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gliden when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 17, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

PENN CENTRAL TRANSPORTATION CO. (NH)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the New York, New Haven and Hartford Railroad Company illegally placed the names of G. Marino, S. Diamonte, N. E. LeMaire, J. C. D'Ambrosio and D. J. Percapo on the Carmen's Upholsterers roster in New Haven Passenger Yard.
2. That accordingly the Carrier be ordered to remove the names of G. Marino, S. Diamonte, N. E. LeMaire, J. C. D'Ambrosio and D. J. Percapo from the Carman Upholsterers roster until they have completed eight (8) periods of 130 days each or a total of 1040 days at Carman Upholsterers work.

EMPLOYEES' STATEMENT OF FACTS: The New York, New Haven and Hartford Railroad Company hereinafter referred to as the carrier, not being able to employ carman upholsterers who have either served a four year apprenticeship or had four years practical experience at carmen's work, employed the following named employees on the dates shown to perform the work of carman upholsterers under a provision of the agreement providing that where they are able to employ men who meet the necessary qualifications to be employed as carmen, that they may employ men who have had experience in the use of tools:

G. Marino employed February 26, 1964
S. Diamonte employed March 24, 1964
N. E. LeMaire employed May 6 1966
D. J. Percapo employed October 10, 1966
J. C. D'Ambrosio employed November 14, 1966

The aforesaid employees when hired by carrier were placed and shown on a roster "EMPLOYEES TEMPORARILY SET UP AS MECHANICS UNDER MEMORANDUM OF AGREEMENT DATED 8-1-53 WHO HAVE ELECTED TO BE PLACED ON THE UPHOLSTERER ROSTER WHEN ELIGIBLE," as provided for in Memorandum of Agreement dated 8-1-53 and have continued

While this matter was under discussion on the property this Board issued Award No. 5403, dated April 25, 1968, involving another roster dispute between the carmen's organization and this company. The employes took the position that Award No. 5403 supported their contention in the instant request, whereas the carrier believes the language of that award is consonant with our position.

In Award No. 5403, the Board erroneously injected a quotation from Art. III of the June "1," 1953 Agreement between petitioner and the Eastern, Western and Southeastern Carriers. The printed Supplement to our Agreement of September 1, 1949 will show that on June 18, 1953 the parties herein only adopted Art. II of the New York Agreement of June 4, 1953.

In any event, Award No. 5403 held only that Mr. Vollero lacked "four (4) years practical experience" as a painter, and should not have been placed on the painters' roster "until such time as he acquired the requisite experience for such classification."

It is carrier's position that the employes here involved all have had considerably more than four years' practical experience prior to having been employed by the railroad. They had "served their time at the trade" and were fully qualified upholsterers.

As such, they are entitled to the roster dates which they have been given as upholsterers.

We respectfully request the Board to so find.

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.

The gist of the instant complain is that Carrier's action in placing five certain employes on the Upholsterers' seniority roster in New Haven Passenger Yard, prior to their having accumulated practical experience in railroad upholstery, was a violation of the controlling labor agreement.

Significantly, in a comparable dispute involving substantially similar contract provisions, this Division in its Award No. 3375, upheld the proposition that only those persons having four years practical experience at Carmen's work could be Carmen, and that Carmen's work, by definition, "was work on (railroad) passenger and freight cars."

The inherent soundness in the reasoning that an employe who had not served a railroad apprenticeship, and had not acquired four years railroad experience in the trade, did not satisfy the prerequisites set forth in Rule 106 for attaining the status of a journey man Carman Upholsterer, strongly suggests that we accept that prior ruling as the precedent to govern the disposition of this claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1970.

CARRIER MEMBERS DISSENT TO AWARD 6026, DOCKET NO. 5804

Referee Harold M. Gilden

Nothing in the Agreement requires that the practical experience in upholstery work be gained only in railroad service. Since it is undisputed in the record that each employe involved had more than four years' practical experience in upholstery work prior to being employed by Carrier, the Award is in error and we dissent.

J. R. Mathieu

H. F. M. Braidwood

W. R. Harris

P. R. Humphreys

H. S. Tansley