

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Detroit, Toledo and Ironton Railroad Company

Dispute: Claim of Employees:

1. That carrier violated the applicable provisions of the current working agreement, Article III of Agreement dated June 15, 1953 and Item 3 of Memorandum of Agreement dated July 19, 1956 by allowing Supervisor David Rhea to occupy a position on the Carmen's Seniority Roster at Jackson, Ohio.
2. That accordingly carrier be ordered to remove Supervisor David Rhea's name with seniority date of October 23, 1974 from the Carmen's Seniority Roster at Jackson, Ohio.

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.

Parties to said dispute waived right of appearance at hearing thereon.

Supervisor David Rhea had a seniority date as a carman helper of July 3, 1969. On August 4, 1969 he was promoted to upgraded carman and on December 17, 1974 he became a "write up man" which is classed as a supervisor on the property involved. At the time of his promotion to a supervisory position he lacked over one-hundred (100) days to qualify for the required 1040 days in the upgraded program as a carman. By correspondence dated October 28 and November 1, 1974 claimant was placed on the Carman's Seniority Roster at Jackson, Ohio with a seniority dated October 23, 1974. The Employees protest such placement and it is their position such action violates the agreement rules 24 and 67. Pertinent portions of these rules are quoted here.

"Rule 24 SENIORITY

(d) Employees promoted to supervisory capacity will hold and accumulate seniority in their respective crafts at the point last employed as craftsmen and may exercise such seniority if displaced with account of position being abolished or for no reasons of their own; if such positions be vacated for reasons of their own they will then take the position of junior employee of their craft and after which they can exercise seniority to fill any bulletined vacancy or new position."

"CARMEN'S SPECIAL RULES

Rule 67 - Qualifications

Any man who has served an apprenticeship or has had four (4) years' practical experience at carmen's work and who, by his skill or experience, with the aid of tools, with or without drawings, can lay out, build or perform the work of his craft in a mechanical manner within a reasonable length of time, shall constitute a carman."

The employes maintain Supervisor Rhea could not accumulate days under the "1040 days program" because the work he performed as a supervisor is not considered carman's work on this carrier relying on Award 835 (Sharfman). Apparently, it was once a carman's position but for the prior thirty-three years it has been a supervisor position, not bulletined to Carmen. In addition, Employes claim the action violates Memorandum of Agreement dated March 8, 1957 which provides in pertinent part:

"ARTICLE III. UPGRADING CARMEN HELPERS AND APPRENTICES

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.

NOTE: Helpers advanced as above will retain their seniority as helpers until they are qualified as carmen under the qualification rule and within thirty days thereafter shall make their choice whether to take seniority as a carman or retain seniority as a helper."

The carrier contends their position is supported by past practice and a Board decision of the Second Division, Award 2338 (Wenke) which involved

Carmen on a different carrier under a different agreement although the key rule is essentially the same.

We are persuaded that the carrier violated Rules 27 and 67 here and improperly placed Supervisor Rhea on the Carman's Seniority Roster. The plain wording of Rule 67 requires four (4) years practical experience at carman's work. Without more, Supervisor Rhea's experience fails to meet this test unless his service during the time he served as a supervisor is counted and that would be improper for the following reasons:

First, Rule 24(d) permits employees promoted to supervisor to hold and accumulate seniority in their "respective crafts at the point last employed as craftsmen" (emphasis added). Supervisor Rhea was last employed as a Carman Helper, not a Carman, prior to his promotion to supervisor. It is one thing to authorize a supervisor to hold and accumulate seniority in a prior bargaining unit position. It is something different to invoke the provisions of the agreement to permit such supervisor to move up the career ladder to a higher position based upon his tenure as a supervisor. It is, of course, within the realm of possibility that the parties could reach an agreement to that effect. But we would need clear and precise language in the agreement to authorize such a departure from the normal procedure followed in collectively bargained agreements. We do not believe Rule 24 can be interpreted to reach that result. And, when we look to Rule 67 which states the qualifications for a Carman, we do not believe that provision provides the authority either. Granted, Rule 67 speaks of "any man" and there is room to argue that such broad language could include supervisors. But one must strain to reach that conclusion. Where this agreement refers to supervisors it is direct and specific and they are not generally brought in by indirection. Rule 24 is the best illustration of this.

Second, we are not persuaded this record supports Carrier's contention that Supervisor Rhea gained the necessary skill and experience to qualify as a Carman while supervising Carmen. Carrier's letter on the property (R. J. O'Brien to J. A. Klerntzak, dated February 17, 1976) asked the rhetorical question: "...what would be considered more 'practical experience' than supervising Carmen in the performance of their duties?" As a general proposition we are inclined to question this equation of supervisory skills with the skill and experience of those supervised. As a generalization it is not necessarily true that supervisor, exercising supervisory control over a skilled mechanic, acquires skill and experience in that craft. It follows that Carrier's assertions along this line amount to little more than allegations unsupported by proof that this supervisor actually acquired the necessary skill and experience during the time he was a supervisor. Moreover, the record includes much that would indicate the contrary is true insofar as the employe's un rebutted description of the duties of a write-up man would clearly negate allegations that such practical experience was obtained to qualify him as a Carman.

Third, we do not find support on this record for Carrier's contention that supervisory time can be applied toward qualifying as a Carman based upon past practice. In order to justify an interpretation based upon past practice we must first establish that the contract provisions under consideration are ambiguous. Our earlier discussion rejected the contention that such ambiguity exists here. It follows that past practice cannot be invoked to modify or amend what is seemingly unambiguous. See Award 1898 (Stone). We do not believe the half dozen instances of supervisors qualifying as Carmen, without union protest, serve to achieve this drastic amendment to otherwise clear and unambiguous rules particularly when these illustrations occurred at a different point removed from Jackson. For these reasons we believe Carrier's reliance upon past practice here is misplaced.

Fourth, we do not view Award 2338 (Wenke) as controlling authority in this case. The factual situations of these two cases are distinguishable. In that Award the Board concluded the applicable rule which permitted supervisors to work provided an exception to the qualifying rule and in that way permitted the accumulation of seniority. No similar exception has been cited here. In addition, the Board concluded in that case the supervisor actually gained practical experience during the period of supervision. As we noted above we lack that factor here.

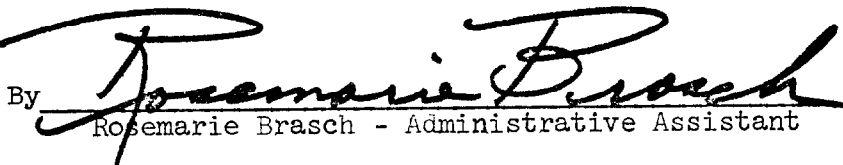
Based upon the reasons given we conclude Carrier violated the rules in placing Supervisor Rhea on the Carman's Seniority Roster and his name should be removed in accordance with the views expressed herein.

A W A R D

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1978.