

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
{ Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

- 1. That the Missouri-Kansas-Texas Railroad Company violated the controlling Agreement when furloughed Sheet Metal Worker Apprentice A. L. Reyes was working as Laborer, was hired as Sheet Metal Worker Apprentice, temporarily set up to Sheet Metal Worker on July 28, 1975 and, was given seniority date on the Sheet Metal Workers' seniority roster of July 28, 1975.
- 2. That accordingly, the Missouri-Kansas-Texas Railroad Company be ordered to remove the name of Sheet Metal Worker Apprentice A. L. Reyes from the Sheet Metal Workers' seniority roster and place him second from the bottom of the Sheet Metal Worker Apprentice seniority roster.

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.

A. L. Reyes was employed by the Carrier as a Laborer on June 19, 1971, and became a Sheet Metal Worker Apprentice on August 21, 1974. He was furloughed as an Apprentice on September 30, 1974 and, while on furlough from this position, resumed work as a Laborer on October 1, 1974. On July 25, 1975, he was designated by the Carrier as a Sheet Metal Worker and was assigned seniority in that capacity by the Carrier as of July 25, 1975. It is this seniority designation which the Organization claims to be incorrect, and the Organization seeks to have Reyes' name removed from the Sheet Metal Workers' seniority roster and restored to the appropriate place on the Sheet Metal Workers Apprentice roster.

It appears that there was some understanding between the Local Chairman of the Organization and a Carrier representative that Reyes would be "temporarily set up" as a Sheet Metal Worker until he had served the specified 1040 hours in that capacity to achieve full journeyman status. The record is not entirely clear as to the details of this arrangement and whether in fact, it was mutually understood by the Local Chairman and the Carrier representative. Further, the question was later raised whether the representatives involved had the authority, under the Agreement, to make such an arrangement.

In any event, during October 1975, it came to the Organization's attention that Reyes had been given full, not conditional, seniority status as a Sheet Metal Worker, and on December 4, 1975, the Organization initiated a claim against the Carrier's action.

The Carrier argues that the claim should be dismissed since the claim originated more than the requisite 60 days "from the date of the occurrence on which the claim or grievance is based", as specified in Rule 27(b). The Board does not find the claim to be procedurally defective. The record shows that the Organization was under the clear impression that a specified "arrangement" covered Reyes' status from July 28, 1975. Information to the contrary was not provided until October 1975, the only point from which a claim would logically flow. The Organization initiated the claim within 60 days thereafter. The Board therefore finds the claim timely and properly advanced by the Organization on the basis of an alleged violation of Rule 62, which reads as follows:

"Any man who has served an apprenticeship, or has had four (4) or more years' experience at the various branches of the trade, who is qualified and capable of doing sheet metal work or pipe work as applied to buildings, machinery, locomotives, cars, etc, whether it be tin, sheet iron or sheet copper, with or without the aid of drawings, and capable of bending, fitting and brazing of pipe shall constitute a sheet metal worker."

The Organization claims that Reyes neither completed his apprenticeship nor had four years' experience in the trade and thus cannot be given journeyman status. The Carrier relies on past practice in its designation of employees in the classification and also on the terms of Rule 23(a) which reads:

"Seniority of employes in each craft or subdivision thereof will date from the time pay starts when employed."

At approximately the same time, the same Carrier designated another employee, a furloughed Carman working as a Laborer, to be a Sheet Metal Worker. The Organization made a similar protest. In that instance, the Board ruled in Award No. 7512 (Zumas) that the Carrier had not violated the Agreement. Carrier argues that this Award should serve to guide the Board in the present instance. But in Award No. 7512, the dispute centered on whether the employee was required to have four years' experience in the trade in the railroad industry, while the Carrier argued that four years' experience in the trade elsewhere met the requirement of Rule 62. Past practice was cited as unchallenged for 25 years to resolve the issue that experience gained anywhere meets the requirement of Rule 62.

This is not the issue here. There is no contention that Reyes had four years' experience in the trade, either with the Carrier or elsewhere.

As to Rule 23(a), this is a logical requirement that employees in a classification shall be paid as such. It does not go so far as to enable the Carrier to grant seniority to an employee merely by placing him in a classification and paying him at the appropriate rate. There are obvious preconditions in placement in a classification, of which Rule 62 is an example. The underlying assumption of this Rule 23(a) is that the employee has been properly placed in the classification.

Rule 62 is clear that achievement of journeyman status requires the serving of an apprenticeship or four years' experience at the trade. An abortive attempt, no doubt with good will on both sides, was made to accommodate Reyes, but such arrangement was disavowed, misunderstood or not pursued. This having failed, the Rule is clear and unambiguous, and the placement of Reyes on the Sheet Metal Worker seniority list can be seen to be a possible detriment to others who may subsequently be properly placed on the roster.

The Board will therefore sustain the claim, although it is clear that the time worked by Reyes since 1975 as assigned by the Carrier properly counts toward his four years' experience. Reyes should resume his place on the Sheet Metal Worker Apprentice seniority roster in accordance with the date he originally achieved that status, and be removed from the Sheet Metal Worker seniority roster.

A W A R D

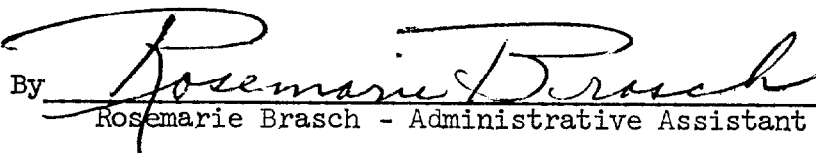
Claim sustained as indicated in the Findings.

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Award No. 7548
Docket No. 7298
2-MKT-SM-'78

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 16th day of June, 1978.