

The Second Division consisted of the regular members and in addition Referee Steven Briggs when award was rendered.

(Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute: (

(The Denver and Rio Grande Western Railroad Company

Dispute: Claim of Employees:

1. That the Denver & Rio Grande Western Railroad Company violated the provisions of the controlling Agreement when it hired a painter from outside the railroad industry to work as a carman painter. This outside painter should have been hired as a helper and been required to meet the requirements and qualifications of a painter in the railroad industry.

2. That the upgrading of carman helpers to carmen painters, has consistently been the past practice on this Carrier's property. That being qualified as a body and fender man does not meet the requirements and qualifications under the Carmen's Classification rules.

3. That accordingly, the Denver & Rio Grande Western Railroad Company be ordered to compensate Carman Painter P. F. Sanchez for the difference between carmen helpers' pay and the pay of a carman painter from January 19, 1982 until January 21, 1982. Then for carman painter's pay from January 22 until such time as this claim is settled, or as long as Mr. Winkler is working as a carman painter while Mr. Sanchez is furloughed and continuing as long as Mr. J. L. Winkler is promoted to a carman painter ahead of Mr. Sanchez, or until this grievance is satisfactorily settled.

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 employes 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 Carrier operates a Freight & Passenger Car Shop at Denver, Colorado, where rail cars are rebuilt, maintained, and painted. There were six Journeyman Painters employed there when in August, 1980, the two most senior experienced Painters retired. To fill in the gap created by their retirement, the Carrier upgraded the Claimant from his Carman Helper position to that of a Set-Up Painter. He had been similarly upgraded for approximately three months in 1979. In January, 1981, another experienced Journeyman Painter retired, creating an additional need for experienced Painters at the Car Shop.

On August 3, 1981, the Carrier hired J. F. Winkler from the outside as a Journeyman Painter. Winkler had eighteen years' experience as a painter. He was added to the Painter Seniority Roster.

On January 19, 1982, the Claimant's position was abolished due to a decline in work volume, and he was set back to his former position of Carmen Helper. On January 23, 1982, the Claimant was furloughed.

The Organization argues that the Carrier violated Rule 91, 92 and 99 of the Controlling Agreement when it hired Winkler as a Carman Painter. It maintains that the word "Carman" is a railroad industry term, and thus it would have been impossible for Winkler to have been hired with the requisite 732 days' practical experience as a Carman under Rules 91 and 92. The Organization also notes the practice of advancing Carmen Helpers to Carmen Painters, and points to one case where an experienced Painter was indeed hired from the outside, but made to serve the contractually required number of days before becoming a Carman Painter.

The Organization also cites Rule 99, Part 7, in support of the Claim:

"7. In the event of not being able to employ qualified carmen and should the foregoing provisions of this Memorandum of Agreement effective August 1, 1953, not provide sufficient carmen to do the work, persons who have had three years' experience in the use of tools may be employed. They will not be retained in service as carmen when carmen become available or when apprentices or helpers qualify for advancement.

Persons employed under the above paragraph shall be governed by the following provisions:

(a) They shall not be placed on the carmen's seniority list nor shall they establish carmen's seniority before first meeting the minimum requirements (732 days) of the rules.

(b) These employees will be released from service in reverse order in which they were employed.

(c) A special list or roster shall be compiled and maintained showing the name and date of employment of these employees; the General Chairman and Local Chairman shall be furnished a copy thereof".

The Carrier argues that the Organization did not follow the usual manner in processing the Claim and, therefore, the Claim is procedurally defective. With regard to the merits, the Carrier cites Rule 27:

"Separate seniority will be maintained in each craft as follows, and employees shall not hold seniority in more than one class in his craft:

Craft Seniority

\* \* \*

Carmen

Journeyman (Carmen)

Journeyman Painters

Upholsterers

Patternmakers

Helpers

Apprentices"

The Carrier notes that the Claimant does not appear on the Painter Seniority List. It also asserts that it properly employed Winkler under Rules 27, 35, 91 and 92, and under the past practice of employing qualified Painters from outside the railroad industry.

This Board has reviewed the applicable Rules and concluded that the Carrier did not violate them when it hired Winkler as a Carman Painter. Rule 91 provides that a person with three years' experience at Carmen's work, who . . . "can perform the work of his craft . . ." shall constitute a Carman. We agree with the Carrier that Winkler's eighteen years' experience as a Journeyman Painter conforms to the thrust of Rule 91. And from Rule 92, the work of painting in connection with the work of the craft is Carman work:

"Rule 92

Carmen's work including regular and helper apprentices, shall consist of building, maintaining, dismantling . . . , painting, . . ."

With regard to Rule 99, since we have concluded that Winkler was a qualified Painter Mechanic when he was hired, it does not follow that he joined the Carrier's employ under Rule 99 as a person who simply had three years experience using the tools of the craft.

We have also considered the Organization's past practice argument, but note that the one case it cited (with regard to an experienced painter hired from the outside and made to serve 732 days before being placed on the Painter seniority board) does not constitute a valid past practice. It is well-established in arbitration generally that a single case is not sufficient to reflect an established practice between the parties to a Labor Agreement.

Having resolved the matter on its merits, there is no need for the Board to discuss the Carrier's procedural argument.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of July 1986.