

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31837
Docket No. MS-31476
96-3-92-3-760

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

(Osceola Johnson

PARTIES TO DISPUTE: (

(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

"Please accept this letter as a FORMAL TIME CLAIM on behalf of MR. OSCEOLA JOHNSON GARY DIVISION GROUP 3(C) B&B PAINTER Account number 80340 seniority date 06-06-66. MR. JOHNSON on January 7, 1992 was laid off as a BRIDGE & BUILDING PAINTER due to force reductions, while MR. TIMOTHY WOYNAROSKI GARY DIVISION GROUP 3 (A) B&B PAINTER FOREMAN account number 81857 seniority date 05-01-72 was retained as a painter, and is at this time working as a painter 8 hours per day 5 days per week.

MR. JOHNSON has more seniority than MR. WOYNAROSKI and should have been retained as painter.

RULE 1 THE SCOPE OF THE CONTROLLING AGREEMENT, RULE 2, RULE 11 - CONSIDERATION, RULE 13 - SENIORITY DATUM, RULE 16 - DEPARTMENT LIMITS, RULE 17 - SENIORITY LIMITS, RULE 40 - SHORT LAY-OFFS, RULE 41 - FORCE REDUCTION all have been violated due to the CARRIER laying off a SENIOR B&B PAINTER while allowing a JUNIOR B&B PAINTER to work.

The Title "FOREMAN" does not give Super Seniority to anyone in any craft. The ORGANIZATION would like to ask why the CARRIER would want to work a FOREMAN by himself? THIS practice is unsafe, this practice is a violation of the CONTROLLING AGREEMENT. RULE 2(b) states: (A) An employee directing the work of men and reporting to officials of the Railroad shall be classified as a foreman.

MR. WOYNAROSKI is working as a painter, there are no PAINTERS. The CARRIER has laid off all the PAINTERS RULE 2(F) of the AGREEMENT states that: (f) PAINTERS work shall consist of all painting, glazing or decorating of all buildings, bridges, signs, office furniture, Water Tanks, Coal Chutes, Sand Towers, Switch Targets, Tell Tales and all other painting in the MAINTENANCE OF WAY DEPARTMENT.

NOWHERE does the AGREEMENT allow for a FOREMAN in any CRAFT to work alone, and or do the work of a CRAFTSMAN of that trade. PAINTERS and other crafts work in places where there is danger of falling or being hit, that's why there are FOREMEN. Foremen were created to direct the work of the employees and to make a safe work place for the employees.

THEREFORE, the ORGANIZATION is requesting that the CARRIER place MR. JOHNSON back to work with any and all back pay due to the CARRIER laying him off and keeping a JUNIOR PAINTER to replace him, and this also shall be a CONTINUOUS TIME CLAIM per RULE 59 of the CONTROLLING Agreement."

FINDINGS:

The Third 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 were given due notice of hearing thereon.

This dispute raises a jurisdictional issue which must be addressed as a threshold matter. Carrier contends that no conference was ever held on the property as part of the handling of this claim. This Board's review of the on-property record confirms this contention.

The Railway Labor Act requires that all disputes must be considered in a conference of the interested parties. See 45 U.S.C. §152 Second. This is an indispensable requirement that must be satisfied before a claim may be advanced to this Board. See Third Division Awards 31389, 26789 and 28617. As a result, we have no choice but to dismiss the claim.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 26th day of December 1996.