

Referee David Dolnick

PARTIES TO  
DISPUTE: The American Railway Supervisors Association  
Norfolk and Western Railway Company

STATEMENT OF CLAIM: It is the Claim and request of the Petitioning Organization that:

1. Respondent Carrier violated Rule 10 of the Agreement when on June 17, 1975, the position of Roundhouse Foreman at Toledo, Ohio, assigned to Mr. R. T. Pierce, was abolished and readvertised as Machinist-Leader, a Craft and Class covered by another Agreement, thus evading the application of the Controlling Agreement.
2. Because of this violative action, Mr. R. T. Pierce was required to exercise his Seniority to another location, adversely affecting him in respect to unnecessary expenses during the period from June 18, 1975 to July 15, 1975, inclusive.
3. That Mr. Pierce be reimbursed for all expenses incurred, including Lodging (\$135.96), Meals (\$87.69) and Auto (1388 Miles).

OPINION OF BOARD: Early in 1975 the Claimant was holding the position of Roundhouse Foreman on the second shift, Saturday through Wednesday at the Ironville Roundhouse. Claimant's position and the Relief Foreman position at this Roundhouse, occupied by D. E. Roshong, were abolished effective June 17, 1975. At the same time, the Carrier bulletined a position Friday through Tuesday. Roshong, the senior employe, bid for and was assigned to this vacancy. Other employes, including Machinists, Hostlers and Laborers were reduced and rearranged.

Carrier simultaneously advertised three new Machinist-Leader positions, one of which alleges the Petitioner, was assigned to fill Claimant's responsibilities as a Foreman, effective June 16, 1975. Petitioner contends that because of all this the Claimant was obliged to relocate. Claim here is for expenses incurred in the relocation process. The basic issue before this Board is whether or not a Machinist-Leader performs a substantial amount of work heretofore performed by the Claimant, work which belongs exclusively to the Claimant under the Scope Rule of the Agreement.

Petitioner alleges that the Carrier has violated Rule 10(f) which reads as follows:

"(f) No position will be abolished or a new one created under another title to perform the same duties for the purpose of reducing the rate of pay or evading the application of this Agreement."

First, Claimant's position was not abolished and a new one was not created under another title "for the purpose of reducing the rate of pay". The rate of pay posted for the Roundhouse Foreman position is higher than the rate for the Foreman position formerly occupied by the Claimant and abolished. That is the unchallenged evidence in the record.

Also, the best evidence in the record is that there was a substantial decline in business-ton miles and the number of operating and store locomotive units.

What duties does a Machinist-Leader now perform that are the same as those formerly performed by the Claimant when he occupied the position of Foreman on the second shift Saturday through Wednesday? Petitioner states that because there is now no supervision on Saturday and Sunday on the first shift and on Wednesday and Thursday on the second shift, it "is obvious that these Machinist-Leaders did assume the responsibilities of dispatching locomotives, supervising and inspecting repairs to locomotives, and the handling of the M.P. 231 Reports on the four (4) tours of duty that now have no supervision."

Rule 1 - Scope reads:

"These rules shall apply to employes who have immediate and continuing supervision of machinists, electricians, boilermakers, carmen, blacksmiths, sheet metal workers and their helpers, apprentices, laborers in the Maintenance of Equipment Department, but not including those who are covered within the scope of agreements with other organizations."

This rule does not explicitly provide that dispatching locomotives, inspecting repairs to locomotives and handling of M.P. 231 Reports is work which belongs exclusively to Foremen. Nor is there any evidence whatsoever that the exclusivity of this work to Foremen has been historically established by a long established and accepted practice.

We denied a comparable claim in Award 2010. In doing so, we said:

"... (Foremen and Supervisors) do not have the exclusive right under that rule (Scope) to every supervisory function unless it can be shown by probative evidence that they have such exclusive right. Petitioner must show that historically and customarily all supervisory work was performed exclusively by employes covered by the Agreement ..."

Carrier has the sole and exclusive right to determine when and under what conditions a Foreman or Supervisor may be assigned to supervise a group of employes. The mere fact that no Foreman is assigned to the first shift on Saturdays and Sundays and to the second shift on Wednesdays and Thursdays is no evidenciary proof that Machinist-Leaders have assumed the supervisory duties belonging exclusively to employes represented by the Petitioner. The maintenance of Foremen or Supervisor positions is a managerial prerogative under Rule 23.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the 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.

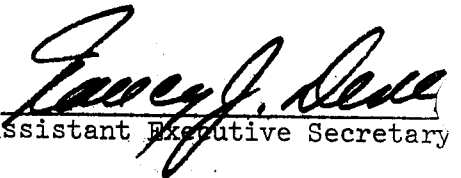
The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST: Executive Secretary  
National Railroad Adjustment Board

By:   
Assistant Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1976