Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award No. 4855
Docket No. 4822
92-4-91-4-1

The Fourth Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

1. That the former Baltimore and Ohio Railroad Company, now CSX Transportation, Inc., abolished Ready Track Foreman position at Willard, OH, Locomotive Shop in violation of Rule 1 (Scope) of the agreement dated January 1, 1942, as subsequently amended and has thereby, improperly treated and damaged D. P. Miller; and,

2. That the abolished position was replaced by a lower rated position performing essentially the same work under a different title; and,

3. Accordingly, we request that the position of Ready Track Foreman be re-established and Claimant Miller be recalled from furlough; and

4. That Claimant Miller be paid the difference between his earnings as Electrician and the earnings he would have received as Supervisor for the period from January 4, 1989, until he is returned to service as Supervisor.

FINDINGS:

The Fourth 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 were given due notice of hearing thereon.

As Third Party in Interest, the International Association of Machinists and Aerospace Workers was advised of the pendency of this dispute and filed a Submission with the Division.

The incumbent at the Willard, Ohio, Locomotive Shop retired from his position as Ready Track Foreman. Under the Supervisor's Agreement, the Claimant was next in line for the position given his Supervisor's seniority. However, the Carrier issued a Bulletin dated December 28, 1988, abolishing the position of Ready Track Foreman at end of shift on January 3, 1989. It sought by the same Bulletin bids for a new position of Ready Track Dispatching Lead Machinist.

The Organization filed Claim on behalf of the furloughed Supervisor alleging Carrier violation of the Agreement by improperly abolishing the Ready Track Foreman position at the Willard Locomotive Shop. The Organization contends that the Carrier violated the Scope of the Agreement, particularly that part which reads:

> "Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing rates of pay or evading the application of these rules."

The Organization's central position and supporting evidence indicates that the position was abolished and a relatively same position created under the Machinists' Agreement. It presents as undisputed fact that the two positions were "relatively" similar. Evidence of record including the Bulletin, Lead Machinist Liss' statement and the correspondence on the property confirm, in the Organization's view, the fact that the Carrier violated the Scope of the Agreement by discontinuing the Ready Track Foreman position and then creating a lower paid position covering the same class of work. The Organization argues that nothing changed between January 3, and January 4, 1989, to affect the need or supervision required. In any event, if supervision were reduced, the coverage would have had to come under the Supervisor's Agreement and not from employees foreign to that Agreement.

In a Third Party Submission, the International Association of Machinists and Aerospace Workers argued that the Lead Machinist is not performing the same work previously performed by the Ready Track Foreman. It contended that Supervisor's duties of signing time cards, making managerial decisions and taking responsibility for operations at Willard are not permissible under Rule 29 of the Machinist Agreement. The Machinists deny that the Ready Track Foreman's position was abolished and replaced with a lower rated position doing the same work.

The Carrier denied that it violated the Agreement. In fact, it argued that the new position did not perform the same duties as previously performed by the Ready Track Foreman. It further argued that given a decrease in the volume of work with only three craftsmen on duty at one time, it did

not require the continuation of the level of previous supervision. The Carrier maintained that a General Foreman could handle any supervision beyond the new lead mechanic's permissible responsibilities. It also noted that the Lead Machinist was also performing the work of his craft which is prohibited from contract Supervisors. The Carrier does not deny that the Lead Machinist is doing some limited supervising, but only that it did not violate the Agreement when it chose to establish a different position under a different Agreement.

A careful review of all the relevant arguments and facts reveals that there is no provision or language specific to the Scope Rule that prohibits Carrier's action. Nothing in the present language provides any classification of work protected herein. The Agreement is specific to hold that new positions under this Agreement could not be created for the purpose of evading the intent of this Agreement. Nothing prohibits the Carrier from determining the amount of supervision it feels is necessary for competitive economic purposes. This Board cannot find in these circumstances sufficient variance from recent Awards to reach any conclusion other than Carrier's action is not Agreement restricted.

Even from a very narrow interpretation, the Board cannot find that the decision by the Carrier to reduce the supervision necessary was violative of Agreement language. First, it has often been held that the Carrier has the right to determine when and if full time supervision is necessary (Third Division Awards 26374, 11441; Fourth Division Awards 4677, 3503, 3403). Carrier's decision herein not to have a Supervisor was fully within its managerial discretion.

Second, under the Lead Mechanics' Agreement of September 1, 1977, the Lead Mechanic is permitted to perform limited amounts of supervision. The record, however, demonstrates that the Lead Mechanic did not perform the same class of work as performed by the Ready Track Foreman. He did not give direct orders to shop personnel and also did the work of his craft. Under a different but similar Agreement and circumstances, the findings of Third Division Award 28057 are on point:

> "..There is no rule requiring a Foreman, unless Carrier so determines. In this dispute, the new Leading Lineman did not perform the same class of work as the Foreman of the abolished line gang. In the previous gang the Foreman devoted full time to supervising the work of the four linemen on the gang; in the new assignment, the Leading Lineman worked with and supervised the work of one Lineman. The Leading Lineman's responsibilities were clearly distinct from and different than those of the Foreman...."

A careful reading of both the statements of the International Brotherhood of Firemen and Oilers' General Chairman and the Lead Mechanic do not overcome the Carrier's denial. Neither statement specifically denies that "a preponderant part of their duties is work of the Machinist craft which certainly distinguishes their duties from those of a Contract Supervisor."

Third, after carefully reviewing all of the Awards presented by both parties to this dispute, we must find that Fourth Division Awards 2010 and 3310, as well as the decision of Arbitration Board No. 510, have identified the major issue at bar. There is no credible probative evidence that Claimant or the Organization has the exclusive right to the work performed. In fact, the evidence leads to the opposite conclusion preventing a sustaining Award. The Board denies the Claim under the doctrine of stare decisis where past decisions have resolved identical and similar disputes. Specifically, Arbitration Board No. 510 involving this same Agreement, parties and issue found:

> "... the B&O Scope Rule is not deemed materially distinguishable from the ARASA Scope Rules in that the B&O Scope Rule refers only to positions and not to work. The Organizations place substantial emphasis upon that portion of the ARASA-B&O Scope Rule providing that '[E]stablished positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing rates of pay or evading the application of these rules.' However, as even the Organizations recognize, said provision contemplates the creation of new positions solely within the scope of the ARASA-B&O Agreement. The provision does not apply to the situation here, nor to Fourth Division Award Nos. 2010 and 3310, wherein Lead Mechanic positions were created under the schedule agreement applicable, respectively, to the carmen's and machinists' crafts. The same rationale undercuts the Organizations' reliance upon seniority, bulletining and rate of pay provisions of the ARASA Agreements with former properties of the Carrier. They simply are inapplicable to the situation in this case where Foreman's positions were abolished and Lead Mechanic positions created under other agreements."

Accordingly, on the basis of this record and past decisions with which we find no error, we are compelled to deny the Claim. No evidence of record demonstrates that the Carrier was restricted from the action complained of herein by the Agreement.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of August 1992.