

Award No. 1641

Docket No. 1542

2-IC-CM-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, the Carrier was not authorized to assign Carmen's work at Effingham, Illinois to Foreman V. E. Garrett, effective April 16, 1951.

2. That accordingly, the Carrier be ordered to discontinue such assignment and to restore Carman W. M. Hardin to service at Effingham, Illinois.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, the carrier regularly employed at Effingham, Illinois, three carmen, namely, W. H. Ashworth assigned to the first shift, W. M. Hardin to the second shift, and V. E. Garrett to the third shift, in accordance with their seniority.

Effective September 1, 1949, the carrier abolished the first and second shifts. Carman W. H. Ashworth being the senior carman displaced Carman V. E. Garrett and Carman Hardin and Garrett were furloughed and given employment at Mattoon, Illinois.

During the month of January, 1951, Carman Ashworth became seriously ill and Carman Hardin being on leave of absence account an off-the-job injury, Carman Garrett was recalled to Effingham to temporarily fill the position held by Carman Ashworth. Carman Hardin recovered from his injury, reported for work at Mattoon, Illinois, February 1, 1951, and made request to displace Carman Garrett at Effingham. His request was declined. Subsequently, Carman Ashworth retired from the service of the carrier and Carman Hardin again made a request to displace Carman Garrett. His request was again denied.

On April 16, 1951 a position of mechanical foreman at Effingham was created and Carman Garrett was appointed to the position. Since Carman Garrett's appointment to mechanical foreman, he has continued to perform all carman's duties he was performing prior to his appointment. There is no other carman employed at Effingham; in fact, he is the only employe in the mechanical department at that point.

The agreement effective April 1, 1935, and amended September 1, 1949 is controlling.

applicable only to carmen and the application contended for by petitioner would result in complete nullification of the unambiguous provisions of Rules 19 and 33. The application given here is in complete harmony with all rules of the agreement and not violative of any rule.

Employees' contention in their statement of claim that carrier should be ordered "to restore Carman W. M. Hardin to service at Effingham, Illinois" is not understood. While Mr. Hardin was in service up until August, 1949, he requested repeatedly to be transferred to some other point, stating that he did not want to work at Effingham. He refused to work the vacancy at Effingham caused by the absence of Carman Ashworth, stating that as long as there was a junior employe, he would not consent to work at Effingham. Employees are asking your Board to order carrier to place Mr. Hardin at Effingham, in spite of the fact that he has indicated on numerous occasions that he does not desire to work there. It is a privilege of the carrier, not abridged by the agreement, to select any competent mechanic for position of foreman, and not on the basis of seniority alone. To sustain this claim would be to invade and nullify the traditional and inherent right of management to select employes for foreman positions under the provisions of general rule 20.

It is the contention of the carrier that there has been no violation of the agreement with System Federation No. 99, and the Board is requested to deny this claim.

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.

The parties to said dispute were given due notice of hearing thereon.

Prior to September 1, 1949, carrier employed three carmen at Effingham, Illinois. Effective that date, the carrier abolished the first and second shifts. Carman Ashworth being the senior carman was retained on the remaining shift. The other two carmen, Hardin and Garrett, were given other employment at Mattoon, Illinois. In January 1951, Ashworth became ill. Hardin being on leave of absence because of injury, Garrett was assigned to Effingham. On February 1, 1951, Hardin had recovered from his injury and he reported for duty. On February 2, 1951, the vacancy due to Ashworth's absence was bulletined. Hardin did not bid for this assignment and it was awarded to Garrett. On April 16, 1951, carrier created the position of mechanical foreman at Effingham and selected Garrett for the position. On April 23, 1951, Hardin lodged his complaint with the carrier asserting that it violated the agreement in changing the status of car inspector at Effingham to a position of working foreman. The claim is that (1) the carrier was not authorized to assign carman's work at Effingham to Foreman Garrett on April 16, 1951, and (2) that such assignment be discontinued and Hardin restored to service at that point.

It is evident that Garrett was the owner of the carman's position at Effingham, he having been the successful bidder therefor. Hardin had no right to displace him thereafter. Rule 58, current agreement. The organization contends that the carrier violated the agreement under these circumstances by appointing Garrett as a working foreman. We think it was proper under the provisions of Rule 20. The record shows that Effingham was a one man point. Rule 135. After Garrett was appointed a working foreman, he could under the provisions of Rule 33 perform carman's work as no mechanics were employed at that point. It is for the carrier to deter-

mine the force required to perform the work necessary to be performed. When the necessary work can be performed by a working foreman, such foreman may perform mechanic's work of each craft when the requirements of Rule 33 have been met.

It is contended that the carman's position at Effingham was not bulletined. The evidence shows in this respect that Hardin repeatedly stated he did not want the assignment. It corroborates the carrier's statement that he declined to bid for the position. The organization then asserts that it was not necessary to bulletin the position and that it should have been filled under Rule 28, the Reduction and Restoration of Forces rule. But under this rule a preference only was given the senior employe and in the present case the claimant did not want the position, at least until after the creation of the working foreman position at Effingham.

We are obliged to deny the claim for the reasons stated which, we think, are supported by Awards 188, 870, 1473 and 1487.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March, 1953.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1641

We dissent from the findings of the majority in Award No. 1641. The current agreement makes no provision for the substitution of the so-called "working foreman" for the senior carman. The carrier concedes that the claimant (Hardin) holds "prior rights under this agreement" (current agreement effective April 1, 1935) over Garrett to employment as a carman at Effingham, Illinois. Furthermore, there is no evidence, and carrier does not contend, that claimant was "recalled to service" at Effingham in accordance with Section 5(a) of the Interpretation of Rule 30 nor that he, in accordance with Section 5(b), elected not to transfer. For the foregoing reasons the findings of the majority are erroneous.

Edward W. Wiesner

R. W. Blake

A. C. Bowen

T. E. Losey

George Wright