

Award No. 2093
Docket No. 1872
2-TRRAStL-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 25, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

and

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement a clerical employe was improperly assigned to temporarily fill the position of Assistant Car Foreman during the period July 8, 1954 to August 28, 1954, inclusive, at the Jefferson Avenue Yards.

2. That accordingly the Carrier be ordered to discontinue the assignment of other than Mechanics to position of Assistant to Car Foreman temporarily and compensate designated Carmen for wage loss during the aforesaid period.

EMPLOYEES' STATEMENT OF FACTS: During the period July 8, 1954 to August 28, 1954, inclusive, Clerk L. C. Oelze was assigned to fill temporarily the position of assistant car foreman, at the Jefferson Avenue Yards, who was off on vacation.

The dispute was handled with the carrier officials designated to handle such affairs who all declined to adjust the matter.

The agreement effective April 1, 1945, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that under the clear and unambiguous terms of Rule 29, which reads as following:

"Employes covered by this Agreement assigned temporarily to fill the place of a foreman will receive the same rate as paid the foreman and will assume foreman's hours and responsibilities while so engaged. Said positions shall be filled only by mechanics of the respective crafts in their departments." (Emphasis ours.)

chanics to fill temporary vacancies. Both rules must, of course, be considered in arriving at the meaning of the parties.

THIRD. Our interpretation of Rules 15 and 29 is substantiated by our practices under the contract. As we told you in our letter of July 21, 1954 referred to, we have appointed twelve clerks to foreman positions and hired six foremen from outside sources since 1919, none of which appointments were protested by the Shop Crafts' organizations.

We cannot make any change in the decision given in our letter of July 21, 1954, referred to."

There is no basis for the claim under the rules of the agreement and it should be denied.

FINDINGS: The Second 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.

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

The question for our determination is whether or not the carrier is bound to use a mechanic when it chooses to fill the place of a foreman temporarily.

The facts of record disclose that the carrier selected a clerk to temporarily fill a foreman's vacancy.

It is our opinion that the action taken by the carrier in the instant case was in violation of Rule 29 of the effective agreement. The rule provides in essence, that if the carrier chooses to assign an employee to temporarily fill the place of a foreman such choice shall be limited only to mechanics from the respective crafts in their departments.

This same question has been passed on by this same Division in its Award No. 1628 which sustained the claim of a machinist when a furloughed foreman was used to temporarily fill a vacancy of foreman's position.

It is urged here, by the carrier, that the instant case should be decided differently than was the case covered by Award No. 1628, because of the inclusion of Rule 15 in the current agreement before us. We believe that Rule 15 has to do with other than temporarily filling a vacancy. The carrier seemingly is not restricted in making its choice of foremen except when employees are used to temporarily fill a vacancy.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1956.