

Award No. 2319

Docket No. 2213

2-B&M-BK-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Blacksmiths)**

BOSTON & MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: 1. The Blacksmiths claim the Carrier violated Rule 28 of the Agreement of April 1, 1937 when they assigned Carmen (Upholster) Joseph Marange to temporarily fill the place of Blacksmith Foreman I. M. Thorne at Concord, New Hampshire Car Shop on October 22, 25, 26, 27, 28 & 29, 1954.

2. That, accordingly, the Carrier be ordered to compensate John E. Michaud, Concord Shop Blacksmith, the difference between compensation already received as a Blacksmith and that amount of daily compensation paid Carmen J. Marange for services rendered during the aforesaid period.

EMPLOYEES' STATEMENT OF FACTS: Mr. I. M. Thorne, blacksmith foreman, at Concord, New Hampshire, car shop reported off sick October 22 through October 29, inclusive.

Carmen (upholster) Joseph Marange was assigned to fill the place of Mr. Thorne during this period.

Mr. Marange acquired the status carmen (upholster) when his position of foreman upholster was discontinued September 7, 1954. His seniority as a carman (upholster) was such as would have provided him continuous employment in the carmens craft and class.

The agreement of April 1, 1937, as amended is controlling.

POSITION OF EMPLOYEES: The question here involved is whether or not the carrier had the right to promote Carman (Upholster) Joseph Marange to temporarily fill the position of Blacksmith Foreman I. M. Thorne. It is held by the employees that the carrier did not have such a right and that the promotion of Mr. Marange was improperly made in violation of applicable rules.

Rule 28 quoted below is controlling:

"Rule 28—Temporary Foremen. Should an employee be assigned, temporarily, to fill the place of a Foreman or Assistant Foreman, he will be paid the rate of the position filled and the same conditions as to hours, etc., will apply as to the regular Foreman.

The foregoing, of course, is consistent with Rule 11 of The American Railway Supervisors Association Agreement, which gives furloughed foremen prior right to foremen's vacancies over non-rostered employes.

Yours very truly,

(Signed)

W. S. Mehigan, General Chairman
The American Railway Supervisors
Association"

From the foregoing it can readily be seen by your Honorable Board there is no question but that the carrier's action in this claim is fully tenable, and that the only motive for the petitioner to even bring this dispute before your Honorable Board was due to the misassumption that Second Division Award No. 1628 was at par to the instant dispute. Of course, the carrier has fully proven herein, beyond any shadow of a doubt, that the circumstances involved in Second Division Award No. 1628 were absolutely incongruous to the instant dispute.

This claim is unsupported by rule and cannot be supported by the petitioner. "Here, however, the contention is merely a conclusion of the pleader without adequate evidence to support it." See First Division Award No. 11471.

The claim is without merit and 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 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.

Claimant was regularly assigned as a Blacksmith at the Concord, New Hampshire, Car Shop. On October 22, 1954, the Blacksmith Foreman reported off sick. Carman Joseph Marange, an upholsterer who had formerly held the position of Foreman Upholsterer until the position was discontinued, was used as Blacksmith Foreman during the regular foreman's absence. Claimant contends that he should have been used and demands that he be compensated for his loss of the work. He relies upon Rule 28, current agreement, which provides:

"Should an employe be assigned, temporarily, to fill the place of a Foreman or Assistant Foreman, he will be paid the rate of the position filled and the same conditions as to hours, etc., will apply as to the regular Foreman.

When employes of but one craft are to be supervised, should a mechanic be temporarily assigned as Foreman or Assistant Foreman, he will be selected from the craft to be supervised."

The meaning of the first paragraph of the rule is clear. The carrier is not required to fill the foreman's position during his temporary absence unless it deems it necessary to do so. Consequently, the first paragraph of the rule means that if the carrier elects to fill the position of a foreman temporarily the employe used will be paid the same rate of pay and work under the conditions as to hours, etc., as the regular occupant of the position.

The second paragraph of the rule states in effect that if the position is to be filled and a mechanic is to be assigned, the mechanic is to be of the craft supervised where there are employes of only one craft to be supervised. The rule is not clear. It does not say that a mechanic of the craft supervised shall be used as was the case involved in Award 1628.

We are obliged to conclude that a mechanic does not have the exclusive right to fill the temporary vacancy on the foreman's position. Rule 28 does not give the work to mechanics. A foreman on the carrier is a member of a supervisors association while the claimant belongs to the Blacksmiths Organization. Their rights arise under two separate agreements. Could it be said that the language of the quoted rule would require the use of a mechanic rather than an available assistant foreman to fill a temporary vacancy on a foreman's position? We think not. We think the rule must necessarily mean that a foreman's temporary vacancy could be filled by an available foreman or assistant foreman, or a furloughed foreman, and that a mechanic, a member of another craft, would have rights under the rule only when such available foreman on the foreman's roster was exhausted.

The furloughed foreman here used was an upholsterer. He was used to fill the temporary vacancy of a blacksmith foreman. Under the rule, if it was necessary to use a mechanic, a blacksmith is required to be used. The use of a furloughed upholsterer to supervise blacksmiths does not appear logical, particularly if direction and instruction in performing blacksmith's work is required. But the history of the rule as shown by the record indicates that the rule was intended to mean that where there is a temporary vacancy on a foreman's position because of the absence of the regularly assigned foreman, it is proper to fill it with an available, qualified mechanic if no foreman is available to be used. The supervision of work is particularly the function of management, and, if the carrier elects to negotiate rules which permit a furloughed Upholsterer Foreman to supervise a force of blacksmiths, we find nothing which prohibits it. Certainly, as we have said, a mechanic does not have the exclusive right to do foreman's work on a temporary foreman's vacancy. His right to perform the work of another craft must be established by his own agreement. We find nothing in the blacksmiths' agreement that gives claimant the exclusive right to the work. We necessarily conclude that the controlling rules do not give the work on a blacksmith foreman's temporary vacancy exclusively to mechanics of that craft. Awards 1796, 1797, and 1798. It is only when a mechanic is necessary to be used that the second sentence of Rule 28 has any application. We do not think that claimant has shown an exclusive right to the work involved as against the furloughed foreman who performed it.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1956.