

**Award No. 4513**  
**Docket No. 4375**  
**2-B&LE-CM-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYEES'**  
**DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**BESSEMER AND LAKE ERIE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the controlling agreement the Carrier used other than mechanics to fill temporary vacancies of foremen.

2. That accordingly, the Carrier be ordered to additionally compensate Carman J. J. Pabyecki for the period of May 31 to June 16, 1961 and Carman W. K. Black for the period of July 3rd to July 7th 1961 the difference of their Carmen's rate of pay and that of Foremen's rate of pay.

**EMPLOYEES' STATEMENT OF FACTS:** Carmen J. J. Pabyecki and W. K. Black, hereinafter referred to as the claimants, are employed by the Bessemer and Lake Erie Railroad Company hereinafter referred to as the carrier, at Butler, Pa.

At Butler, Pa. Car foreman H. J. Diefenderfer was absent from duty from May 31, 1961, inclusive, Mr. Diefenderfer's position was filled by foreman F. R. McConnell on three (3) of the twelve (12) days listed in the claim of Carman J. J. Pabyecki and by Car Foreman M. E. Weikal on the other nine (9) days of the claim. Both of these supervisory employees, Messrs. McConnell and Weikal, are regularly employed as foremen at Greenville, Pa., in the car department. Butler Carman J. J. Pabyecki was assigned to temporarily fill Mr. Diefenderfer's position from June 19, 1961 to June 23, 1961, inclusive.

District Car foreman L. R. Crosby at Butler, Pa. was absent from duty from July 3rd, 1961 to July 7th, 1961, inclusive, Mr. Crosby's position was filled on the four (4) days listed in the claim by Butler Car foreman H. J. Diefenderfer. Foreman Diefenderfer's position of car foreman was filled by Foreman M. E. Weikal of Greenville, Pa.

This dispute has been handled with all carrier officers designated to handle such matters, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

erty. The claim has not been handled in accordance with the Railway Labor Act and should therefore, be dismissed.

However, without prejudice to the carrier's position as stated above, if the board assumes jurisdiction and rules on the merits of the issue in dispute, it is the position of the carrier that the claimants' claims are without merit for the following reasons:

1. Rule 25(b) of the current schedule agreement had its inception as Rule 34 of agreement between the United States Railroad Administration and the employees represented by the Railway Employees' Department of the American Federation of Labor dated September 20, 1919 and has been in effect on this property since that date. The interpretation of the rule as issued by the Director General of Railroads and reaffirmed by Railway Board of Adjustment No. 2, United States Railroad Administration, stated that it was not the intent of the rule to prevent gang or other foremen from filling vacancies caused by foremen up to and including the general foreman laying off. Rule 25(b) has been applied for over forty (40) years in all crafts on this property consistent and in conformity with the interpretation of the Director General of Railroads and subsequent decision rendered by Railway Board of Adjustment No. 2, United States Railroad Administration.

2. A careful reading of the full text of Rule 25(b) definitely establishes that it is a permissive rule rather than a mandatory rule, containing no prohibition whatsoever against the practice of management transferring the incumbent of an established supervisory position from one area of responsibility to another or to combine the supervisory responsibilities of regularly assigned supervisors.

3. Second Division, National Railroad Adjustment Board Award No. 1628, upon which the employees specifically based their position in the handling of the issue on the property, is not applicable to this dispute. There is no similarity between the facts, conditions and circumstances in this instant dispute.

On the basis of the facts outlined herein, the carrier respectfully requests that the Board render a denial award supporting the carrier's denial of the claim in this case.

**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.

Parties to said dispute waived right of appearance at hearing thereon.

It is the contention of Claimants herein, that on 16 days during May, June and July, 1961, the Carrier improperly assigned Foremen McConnell and

Weikal to fill temporary vacancies of Car Foreman at the Butler yard Car Department where Claimants are employed as Carmen on the repair track.

Carrier first objects that the Organization has submitted to this Division a claim different than that which was processed on the property in that the claim as submitted here encompasses more days than the claim submitted and processed on the property. An examination of the claim as submitted here indicates that it is a claim for sixteen days of alleged violations; the same as that processed on the property, and this objection of the Carrier is overruled.

Rule 25 (b) of the Controlling Agreement reads as follows:

**"(b) Should an employe be assigned temporarily to fill the place of a foreman, he will be paid his own rate-straight time for straight-time hours and overtime rate for overtime-hours-if greater than the foreman's rate; if it is not, he will get the foreman's rate. Said positions shall be filled by mechanics of the respective craft in their departments." (Emphasis ours)**

It is the Carrier's position that this is a permissive rule and contains no prohibition against management transferring the incumbent of a supervisory position from one area of responsibility to another.

The Organization contends that the rule is mandatory once a decision is made to temporarily assign an employe to fill the place of a foreman. That employe must be a mechanic of the respective craft from that department.

This identical Rule and similar rules have been examined by this Division on several occasions. The keystone award appears to be our Award 1628. Carrier attempts to distinguish Award 1628 and subsequent Awards from the instant dispute. Award 1628 is factually distinguishable in that the temporary assignment was there filled by a former supervisor who was at the time of the assignment working as a Machinist at another point. But there the distinction ends. This Division's interpretation of the Rule in Award 1628 clearly separates the first and second sentences of the Rule, and holds that the second sentence contracted the work in question to mechanics of the respective crafts in their departments.

It has been urged that Award 1628 and the Awards based upon it should be repudiated by us, as improper interpretations of this Rule. A re-examination of the Rule, the record made herein, and our former Awards leads us to decline such action.

The unequivocal language of Rule 25 (b) gives a contractual right to the temporary vacancy of a foreman to the mechanics of the respective craft in their departments whenever the Carrier determines to fill such vacancy.

#### AWARD

Claim 1: Sustained.

Claim 2: Sustained. Claimant Pabyecki to be additionally compensated for the dates of May 31, June 1, 2, 5, 6, 7, 8, 9, 12, 13, 15 and 16, 1961; Claimant Black to be additionally compensated for the dates of July 3, 5, 6 and 7, 1961.

Compensation to be the difference they received for such dates at their Car-men's rate of pay and that of the foreman's rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.