

Award No. 4850

Docket No. 4716

2-WM-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

WESTERN MARYLAND RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That the carrier violated the controlling Agreement on January 23, 24 and 25, 1963, when it assigned Assistant Car Foreman Wreck Master W. E. Devine to temporarily relieve Assistant Car Foreman Lee Blades, who was absent account of sickness.

(2) The carrier be ordered to additionally compensate Carman E. M. Benesch the difference between what he was paid and what he would have received if he had worked the position.

EMPLOYEES' STATEMENT OF FACTS: The Western Maryland Railway Company, hereinafter referred to as the carrier, assigned Assistant Car Foreman W. E. Devine to assume the duties of Car Foreman Lee Blades, who was absent from work on the claimed dates account of sickness. On January 23, 1963, Mr. Devine was called on his rest day to perform this work. January 24 and 25 were regular work days for Mr. Devine.

Carman E. M. Benesch, hereinafter referred to as the claimant, was certainly available that date because he worked his own job and, further, he certainly must be considered qualified because he has been used on occasions in the past to temporarily relieve foremen who were absent.

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

The Agreement effective January 1, 1947, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is the position of the employes that the carrier violated Rule 30 of the controlling agreement when they assigned

The claimant depends on Rule 30 of the shop crafts agreement which reads as follows:

"RULE 30.

FOREMANSHIP FILLING TEMPORARILY

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 foremen's rate. Said positions shall be filled only by mechanics of the respective craft in their departments."

Rule 30 is not applicable in this case since it was unnecessary to call a mechanic to work as foreman. Had the vacancy not been filled from the foremen's craft, under Rule 30, it would then have been incumbent on the company to call a mechanic from the carmen's craft.

Foremen on the Western Maryland are in a craft represented by The American Railway Supervisors Association, and the claimant is a member of the Brotherhood of Railway Carmen of America. Their rights arise under two separate agreements, and it could not be said that mechanics have preferential right to temporary vacancies as foremen over available foremen who hold seniority in the foreman craft. Rule 30 simply and necessarily means that should a mechanic be upgraded to fill a foreman position, he must be upgraded from the craft in which the foreman is needed.

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.

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

The Employes cite as persuasive Award No. 1628 and a line of awards to the same effect, including Awards 3735 and 4513.

The Carrier cites no awards to the contrary, but alleges that in this instance it followed its invariable established practice of seventeen years and that this is the first such claim made by the Employes. The Employes deny this statement of established practice, and contend that it was a new practice instituted just prior to this claim. The Carrier's contention of established practice cannot be sustained in face of the Employes' denial and the lack of any sustaining evidence.

On behalf of the Carrier it is further argued that the awards cited are distinguishable in that in some of them the men used as temporary foremen were from other seniority districts or work departments, whereas here he was of this district and department, and, further, that his temporary use

was within Rule 30 as a "mechanic of the respective craft in their (his) department". This seems not to have been contended by the Carrier, either here or on the property, and the record does not show that he was an upgraded carman retaining seniority, or that he was subject to the current Agreement.

As this Division concluded in Award No. 4513, it does not find reason to repudiate Award No. 1628 and the line of awards following it, or to hold that they are not pertinent or persuasive under the facts of this case.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 15th day of March, 1966.