



**Award No. 5297**  
**Docket No. 4984**  
**2-ART-CM-'67**

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

The Second Division consisted of the regular members and in addition Referee Harold W. Weston when award was rendered.

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**PARTIES TO DISPUTE:**

**BROTHERHOOD RAILWAY CARMEN OF AMERICA**  
**RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO**  
**AMERICAN REFRIGERATOR TRANSIT COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the American Refrigerator Transit Company violated the controlling agreement, particularly Rules 25 and 27, at Pueblo, Colorado, when the assigned Carman R. A. Snook by bulletin to the position of lead workman, but instead of performing these assigned duties, he performed the duties of foreman, however, was only paid at the lead workman's rate instead of the salary of foreman, starting May 25th to October 31st, 1964 inclusive.

2. That accordingly, the American Refrigerator Transit Company be ordered to compensate Carman R. A. Snook in the amount of \$305.00 which is the difference between his salary as lead workman and that of foreman covering the dates of August 3rd to October 31st, 1964.

**EMPLOYEES' STATEMENT OF FACTS:** The American Refrigerator Transit Company, hereinafter referred to as the Carrier, operates one of their car shops at Pueblo, Colorado, and on May 18, 1964, the Carrier posted bulletin at that point that bids would be received for the position of lead workman (copy of bulletin herewith attached as Employes' Exhibit "A"), and Carman R. A. Snook, hereinafter referred to as the Claimant, seniority date May 5, 1947, was the successful bidder and was assigned to this job (lead workman) effective May 25, 1964.

On May 25, 1964, Foreman C. A. Newkirk started his vacation and the Carrier had no foreman on the property to take over his duties (the only official available was Shop Superintendent L. W. Hawkenberry), therefore, the Claimant was assigned to perform the duties of the foreman which included supervision of all employes in the Car Department and in charge of all mechanics employed there, including other crafts. The Claimant was also foreman over the Blacksmith Shop and directed work here, ordering material and putting out orders for movement of material and equipment, and in general performing all the duties of Foreman C. A. Newkirk who was then on vacation.

May 25 to June 15—Shop Superintendent and lead carman  
 June 15 to July 6—Shop Superintendent and General Car Foreman  
 July 6 to Oct. 23—Shop Superintendent and General Car Foreman  
 and lead carman  
 Oct. 23 to Oct. 31—Shop Superintendent and lead carman  
 Oct. 31 to Dec. 1—Shop Superintendent and General Car Foreman  
 and lead carman  
 Dec. 1 —Shop Superintendent and Assistant General  
 Car Foreman

It is apparent the amount of actual supervision has varied from time to time. The men are experienced and know how to perform their jobs. Supervision is required to coordinate the activities of the men, determine the order in which the work is to be performed and the extent and nature of repairs to be made. This responsibility was assumed either by the Shop Superintendent and General Car Foreman or by the Shop Superintendent alone. The lead carman merely directed the activities of his gang of which he was a part during the period of the claim. Claimant performed carmen's work along with the members of his gang. He was not relieved of his duties as a carman to spend full time supervising. Claimant worked as a carman with incidental duties as lead workman.

Your Board will note the Employes request that the Company be ordered to compensate claimant "in the amount of \$350.00." The Company does not know how the figure was arrived at. There is no basis for the monetary claim whatsoever.

For the reasons fully stated above, the claim is entirely lacking in merit for the reason that claimant was required to perform only those duties which may be properly required of a lead workman. If the Employes argue that claimant was a foreman, in fact, then the Brotherhood has no right to file or progress a claim on behalf of a foreman and your Board had no authority to docket or hear a claim on behalf of a foreman. The claim must be denied on its merits. If, however, the Employes should argue that claimant was a foreman, then the claim must be dismissed.

All material contained herein has been the subject matter of correspondence and/or conference.

Oral hearing is not requested.

(Exhibits Not Reproduced)

**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 claim is that a lead workman at Pueblo, Colorado, was paid only the rate of that position though called upon to perform the duties of foreman from May 25 to October 31, 1964.

There is no question under Rule 27 of the applicable Agreement but that Claimant would be entitled to the foreman's rate of pay if the evidence shows that he was required to discharge the responsibilities of foreman. Carrier's contention that such a claim can not be entertained because the Agreement does not apply to foremen is specious and untenable. The present claim is not brought by a foreman but in behalf of an employe whom the Petitioner considers aggrieved under Rules 25 and 27 of an agreement to which Carrier has committed itself.

The only question is one of proof, namely, did Claimant in fact perform foremen's work at any time between May 25 and October 31, 1967. It is undisputed that Claimant did direct and assign the men in his gang but that is not helpful to his case since Rule 25 expressly provides that it is the leadman's function to lead, assign and direct. When read in their entirety, neither Shop Superintendent Smith's letter of October 12, 1964, to the Local Chairman nor Mechanical Superintendent Pope's letter of January 13, 1965, to the General Chairman impresses us as being an admission that Claimant did not perform physical work while on duty or actually discharged the responsibilities of a foreman.

There was higher supervision present at Pueblo throughout the entire claim period and while at times it appears to have been rather skimpy, insufficient facts have been shown to warrant a finding that it necessarily follows that Claimant had to discharge foreman responsibilities in view of the number of employes, amount of work, and operational pressures involved. The record does not establish that he planned work and programmed assignments for any shift or that supervision flowing down from the Shop Superintendent was not adequate.

Both parties have submitted facts in support of their respective positions but the burden of proof rests with Petitioner to establish the essential but the burden of proof rests with Petitioner to establish the essential elements of its claim. We are not satisfied that a fair preponderance of the evidence establishes, in the face of Carrier's denials and proof, that Claimant performed foreman duties during the period under consideration.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1967.

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