

Award No. 6131
Docket No. 5929
2-N&W-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. McPherson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

NORFOLK & WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Agreement of January 1, 1943, as subsequently amended, between the Virginian Railway Company, and the employes represented by System Federation No. 40, now under the jurisdiction of System Federation No. 16, on the New River Division of the Virginian Railway, specifically at Elmore Shops, Elmore, West Virginia, when it promoted mechanics W. B. Blackwell and Don Hatfield, who were from another Division or Railroad, where another agreement is controlling, to positions of Assistant Car Foreman at Elmore Shops.

2. That accordingly Carrier be ordered to pay Carmen Mechanics W. E. Powell and J. O. Johnson and those subsequently named in lieu thereof, the difference between the regular mechanics' rate of pay which they received and that which they would have received, had they been properly assigned to Assistant Car Foreman or Gang Foremen positions, if same be greater, for the month of January, 1968 and for each succeeding month thereafter, for so long as such violation continues to exist.

3. That Carrier be ordered to comply with rules of controlling agreement, by promoting two (2) of such mechanics at Elmore, as are subject to the controlling agreement, to the positions of Assistant Car Foremen or Gang Foremen, which were improperly assigned to said Don Hatfield and W. B. Blackwell, thereafter limiting such promotions to the mechanics subject to the controlling agreement, in the territory involved.

EMPLOYEES' STATEMENT OF FACTS: Carmen W. E. Powell and J. O. Johnson, hereinafter referred to as claimants, were regularly employed by the Norfolk and Western Railway Company, hereinafter referred to as the carrier, at carrier's shop, at Elmore, West Virginia, a point on

your Board, the Employees persist in limiting the situation to Elmore and its employees. The former Virginian Railway Company extended from Norfolk, Virginia westward to Gilbert, West Virginia; therefore, the carrier would ask if this claim is not requesting your Board to be partial to the carmen at Elmore, thus showing discrimination, arbitrariness and capriciousness against all other carmen on the system.

In addition to the self-centered request, the employees are asking that the Board exceed its authority by ordering the carrier "to comply with rules * * *." The various Divisions of the Board have consistently held that their function is to interpret the rules as written, not write new ones or enforce those as written.

Carrier has shown that no violation of the agreement has occurred, that the narrow interpretation placed upon Rule 18 is not the meaning and intent of the rule and the request of the employees is beyond the power of this Board to grant.

The carrier asserts there is no merit to the claim and respectfully asks that it be denied in its entirety.

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.

The record indicates that third party notice of the pendency of this dispute was given.

This dispute arises at Carrier's shop at Elmore, West Virginia, which belonged to the Virginian Railway Company prior to merger in 1959. A single labor agreement for the merged roads has never been negotiated, so that the Agreement effective January 1, 1943, as amended, is still controlling at Elmore. Two positions as Assistant Car Foreman were filled in December, 1967 and January, 1968 by carmen from Carrier's shops that were not part of the Virginian Railway Company property (now called the New River Division). The assistant foremen are represented by the American Railway Supervisors Association.

The Organization contends that the appointments were in violation of Rule 18 (a) and (b), and should have been limited to carmen employed on the New River Division. Carrier contends that the appointments were in conformity with Rule 18 and could involve employees at any point on Carrier's property. It lists fourteen instances in which mechanics employed on the New River Division have been named to supervisory positions on other divisions or vice versa without protest.

Rule 18 (a) and (b) read as follows:

"(a) Mechanics in service having sufficient experience and ability will be considered for promotion to position of foreman.

(b) When vacancies occur in positions of gang foreman, men from the respective crafts, if qualified, will have preference in promotion."

The Organization further contends that the appointments were arbitrary, discriminatory, and in bad faith. Some months prior to the present appointments, another appointment was made to one of these positions. It was protested as involving favoritism, and the appointee was transferred to another point, "whereupon" (the Organization alleges) "the Management advised 'that if said Laborer was not allowed to keep the job as foreman, he would see that no Carman at Elmore got it.'" This allegation, if substantiated, might indeed indicate arbitrary and discriminatory action. The record, however, fails to show any proof. There has been no identification of the person who allegedly made the remark, the person to whom it was made, or the time and place of the occurrence.

Rule 18 (a) requires only that mechanics in service will be considered. As we indicated in Award 5465, such a rule gives management wide latitude and grants no preferential right. Our Awards 4525 and 4984 required somewhat more of the carrier, because the rule in those cases did grant preferential rights to employes in the same craft and one from a different craft had been named. We believe that the record in the present case does not prove that management failed to give sufficient consideration to "mechanics in service", whether this phrase be interpreted to apply only to those on the property of the former Virginian Road or those anywhere on Carrier's property.

Rule 18(b) does grant preferential rights to men in the same craft, but only with regard to promotion to gang foreman. The Organization contends that on the New River Division the terms gang foreman and assistant foreman are synonymous and interchangeable. The Carrier contends that they are separate and distinct. In view of these conflicting assertions and the absence of concrete evidence, we cannot be sure of the usage on the New River Division. It is our impression that it is the general practice in the railroad industry to distinguish between these two positions. At Elmore there are no gang foremen. One car foreman and three assistant car foremen are assigned to different shifts, so that one and no more than one is normally on duty at almost all times. Each of these four supervises all of the carmen that are working on a particular shift, so that there is no division of the mechanics into separate gangs with subsidiary supervisors. The title of assistant car foreman thus seems appropriate to this situation. In view of the general meaning of the terms and particularly the clear fact that the Rule relates to "gang foremen" while the positions filled were undeniably those of "assistant foreman", we conclude that Rule 18 (b) does not apply to these appointments. It is, therefore, unnecessary to determine whether the reference in that Rule to "men from the respective crafts" applies to all of Carrier's mechanics or only to those working on the New River Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.
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