

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 97, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of C. J. Haberman by failing to properly compensate him for services rendered as a foreman.
- (2) That, therefore, he be properly compensated.

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.

In this case we are faced with a number of important considerations. What was the intent of the parties when they negotiated Rule 23 and how was it applied?

Fortunately on this point there is no disagreement, since the parties agree that past practice accorded the relieving employee pay at the incumbent's rate. If the foreman was paid at the full rate, the relieving employee would be paid this rate. Likewise if the incumbent foreman was paid at the step rate.

When Carrier introduced its new policy on April 1, 1975, it stated that relieving employees would be paid at the step rate of the incumbent position, if they did not accumulate 261 days foreman's service, even though the incumbent was paid at the full rate.

While Carrier is correct in asserting that the organization has no privity of contract when it comes to setting the foreman's rate of pay, it cannot disregard the presence of a collective bargaining agreement where it affects the compensatory relationship.

Rule 23 specifically provides that the relieving employee will be paid at the incumbent's rate and not another rate. The parties have consistently observed this provision that way until the Carrier changed its policy on April 1, 1975. There was no acquiescence by the organization.

Carrier can certainly set the rate of foreman, but the relieving employee must be paid that rate under the terms of the Agreement.

It is axiomatic, that where the clear and unambiguous provisions of a collective agreement conflict with unilaterally determined policies, the collective agreement takes precedence. It is the law of the shop jointly legislated by the parties and reflects the trade offs, understandings, and specific agreements worked out by the parties at the negotiating table.

In this case, the explicit interest of Rule 23 is to compensate relieving employees at the incumbent foreman's rate. If Carrier lowers this rate, the relieving employee would have to accept it. The organization has no control over the dollar amount paid the foreman.

It does have a contractual right, however, on behalf of its constituents to insure that relieving employees are paid at the incumbent foreman's rate.

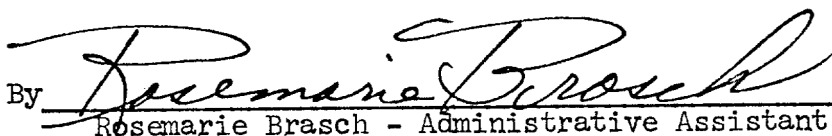
We will thus sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of April, 1979.