

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

Parties to Dispute: { International Association of Machinists and  
Aerospace Workers  
{  
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, Mr. Clarence Spanier, Shop Draftsman, was improperly transferred from first shift shop draftsman job Rocky Mount, North Carolina to second shift wheel shop to temporarily fill the position of Foreman C. R. Wester, July 15, 1976 thru August 1, 1976 inclusive.
2. That accordingly the Carrier be ordered to compensate Machinist C. H. Murray, the difference between compensation already received as machinist and that amount of daily compensation paid Foreman C. R. Wester, during the aforesaid period.

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.

Claimant contends that when Carrier assigned shop draftsman, Clarence Spanier, who is not a foreman or supervisor to temporarily fill the foreman's position at the second shift wheel shop, it violated Agreement Rule 29, which is referenced hereinafter. Rule 29 - Foremanship, Filling Temporarily: "Should an employee be assigned temporarily to fill the place of a foreman, he will be paid his own rate - straight time rate 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 only by mechanics of the respective craft in their departments."

Carrier, contrawise, contends that Agreement Rule 16 does not require that mechanics will be promoted to foreman positions, but merely obliges the employer to consider them. It argues that the positions occupied by the shop draftsman and the foreman he temporarily replaced were not covered by the collective Agreement and thus it was not incumbent upon Carrier to restrict its consideration to only contract employees. Rule 16 reads: "Mechanics in service will be considered for promotion to positions of foremen when vacancies occur in positions of gang foremen."

In our review of the case, we find that Rule 29 is relevant to this dispute, since it specifically addresses the temporary filling of foreman positions and explicitly requires Carrier to fill these positions with only mechanics of the respective craft in their departments. Admittedly, Carrier can select whomever it decides is most qualified for a permanent position, but it cannot disregard the last sentence of Rule 29, when it fills temporary foreman positions. The Agreement is **categorical on this point**. Carrier's correlative assertion that it was a long standing practice on the property to fill such vacancies in this manner is without legal effect at the Board level since it was first raised in its October 13, 1978 submission in direct contravention of Circular 1. Rule 29 is a mandatory provision, incorporated in the Agreement by mutual consent and must be strictly observed by the parties.

In Second Division Award 1628, which is on point with the interpretive emphasis of this case, we methodically analyzed an identical provision and held in pertinent part that, "The second sentence contains the positive shall and clearly means that said positions shall be filled only by mechanics of the respective craft in their department. It is separate and distinct from the first sentence of the rule and unequivocally says that such positions shall be filled only by mechanics of the respective crafts in their departments." We believe this principle is applicable to the fact specifics herein. The foreman's position was temporary and not permanent and Carrier was clearly obligated to fill it with a covered employee. It was not technically mandated to fill the position in the first instance, but once it made this decision, it had to select a machinist. The shop draftsman was not covered by the Agreement and his assignment was improper. We will sustain the claim.

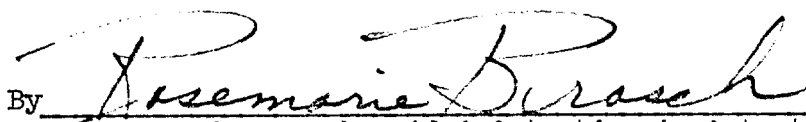
A W A R D

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 16th day of January 1980.