

Award No. 1351
Docket No. MC-1267-58
2-LT-I-'49

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**LOCAL UNION 2186, UNITED STEELWORKERS
OF AMERICA, C. I. O.**

THE LAKE TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: Employees of the car department, in a grievance designated as C-20, protest the assignment of Mr. John Livingstone as extra foreman as a violation of the seniority rights of the following employees: F. A. Ziegler, J. Januszewski, A. J. Horvath, S. Lachman, Joe Ricco, Karl Novosad, John Palavico, and Ray Kennedy.

EMPLOYES' STATEMENT OF FACTS: Mr. Livingstone was appointed by the company to the position of extra foreman to supervise rerailling of cars and locomotives. Mr. Livingstone still retains his position as car repairman on the 7 to 3 turn, and has to be available during the entire 3 to 11 and 11 to 7 period to reraill cars or locomotives.

POSITION OF EMPLOYES: This is an intolerable state of affairs, where at any given hour in this 16-hour period, Mr. Livingstone can at one part of the day be a member of the bargaining unit, and subject to the agreement between the company and the union, and later on be part of management.

The position designated by the company as "Extra Foreman" is not an extra foreman's job. We have other employees who are bonafide extra foremen, who are members of the bargaining unit, and who serve as extra foremen, only in the absence of the regular foreman. These, according to our viewpoint, are foremen as contemplated under our agreement.

Under our agreement we have only two definitions, one for "employee" which reads: "Any individual engaged for remuneration in the performance of any work, or duty, in the Mechanical, Maintenance of Way, and Car Departments of the Lake Terminal Railroad, except Supervisory employees." Supervisor: "Any individual employee of the Company directly or indirectly in the capacity of supervising and directing the working forces, and who does no manual work except in emergencies or for the purpose of demonstration."

The company picked Livingstone on the basis of ability. He is one of the youngest men on the job, and several of the grievants have experience covering many years in rerailling cars and locomotives.

To add to the whole ridiculous situation, Livingstone, on many occasions when he could not accept a call from the company, appointed Ray Kennedy, one of the grievants, to act in his place as extra foreman.

We ask the Honorable Board to rule that this position is not a foreman's job as indicated by the agreement, and that the job be declared in the bargaining unit, and given to the oldest grieving employee.

CARRIER'S STATEMENT OF FACTS: Mr. John Livingston was appointed as extra foreman in the car department on October 1, 1948, to officiate as such in case of derailments, etc., on the second and third tricks. This action was taken in order that there would be someone in charge when rerailling cars, etc., on the second and third tricks. On the first trick, inasmuch as Mr. D. H. Miller, foreman, car repair department, is on duty it is not necessary to have an extra foreman. Mr. Livingston is regularly employed as a car repairman on the first trick. In the agreement between the United Steelworkers of America, Local Union No. 2186, and The Lake Terminal Railroad Company, under the heading "Definitions" the terms—"Company", "Union", "Employee" and "Supervisor" are defined. The definition of a "Supervisor" is as follows:— Any individual employee of the Company engaged directly or indirectly in the capacity of supervising and directing the working forces, and who does no manual work except in emergencies or for the purpose of demonstration.

POSITION OF CARRIER: This claim, as presented, contends the appointment of Mr. John Livingston as an extra foreman was a violation of the seniority rights of the employees senior to Mr. Livingston.

We are unable to see wherein the agreement was violated inasmuch as the union does not represent "Supervisors" or "Foremen" and has never contended they do so, and secondly, it is entirely the prerogative of management as to who is appointed as foreman. When Mr. Livingston is acting in the capacity of extra foreman he supervises and directs the working forces which is precisely what is contemplated by the definition of "Supervisor" in the agreement.

The union claims Mr. Livingston is a "part time Foreman". As above stated, he is only used when needed in cases of derailments, etc., on the second and third tricks, but in any event, the appointment of "Foremen" or "Supervisors" is wholly the prerogative of management, whether part time or otherwise.

For the reasons herein outlined, the carrier submits that the claims should be denied.

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.

The parties to said dispute were given due notice of hearing thereon.

There is no evidence of record that the assignment in question is other than that of a supervisory employe as defined in paragraph 4, under caption "Definition", page 3 of the Agreement effective June 19, 1945.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of December, 1949.