

Award No. 1953

Docket No. 1820

2-GN-FO-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen and Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the Carrier has improperly assigned a Foreman to fill the job of an Engine Watchman on the first shift at Glasgow, Montana.

2. That accordingly the Carrier be ordered to:
 - a) Discontinue the assignment of the Foreman as Engine Watchman on the first shift.
 - b) Bulletin the first shift Engine Watchman's job.
 - c) Restore furloughed employe Walter Sonsteng to service.
 - d) Compensate Walter Sonsteng for each day, consisting of six days per week, in the amount of eight (8) hours' pay at the applicable rate of pay that the Foreman performed this work, retroactive to about May 1953.

EMPLOYEES' STATEMENT OF FACTS: At Glasgow, Montana, the carrier has engine watchman's work that must be performed twenty four (24) hours per day. Foreman K. W. Bliven performs the work on the first shift six days per week. Firemen and oilers craftsmen are assigned on the second and third shift five days per week. A relief employe is assigned to relieve the second and third shift employes on their rest days and he relieves Foreman Bliven on the seventh day, or his rest day, performing engine watchman's work.

Walter Sonsteng, hereinafter referred to as the claimant, is furloughed from Glasgow and was, and is, available to be restored to service to work as engine watchman.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the dispute. The letter of October 19, 1953 directed to the undersigned by Assistant to Vice President M. C. Anderson sets forth the carrier's position and is submitted herewith and identified as Exhibit A.

The attention of the Board is directed to Rule 13 of the current agreement between the parties hereto, reading as follows:

"Employees covered by this schedule who are promoted to official positions, to supervisory positions not covered by this schedule, or to official positions in the organization party to this schedule, will retain and accumulate seniority at point last employed, while holding such positions. When displaced or relieved from such positions, they will be permitted to exercise their seniority at the point held to displace any employee their junior whose positions they are qualified to fill, provided they continue in the employee relationship with the Company."

From this it will be noted that employees covered by this agreement promoted to supervisory positions retain and accumulate seniority while holding such positions, and when displaced or relieved from such positions may exercise seniority to displace any junior employee. Therefore, the net result in this case, had the employees' request been acceded to, would have been that Mr. Bliven would have been filling the same position and handling the same work but at a reduced rate of pay, and in no case would the claimant herein, Mr. Sonsteng, have been able to work.

The Board's attention is further directed to the fact that the agreement upon which this claim was predicated contains no such rule as is common in agreements covering the mechanical crafts restricting the right of foremen to perform work of craftsmen.

Taking the items specified in the employees' statement of claim in order, the carrier holds:

Item 1: There is no rule in the agreement between the parties herein which restricts the right of foremen to perform work and that, therefore, no violation of the agreement has transpired.

Item 2:

a) If the assignment of the foreman were discontinued, it would simply mean that the same employee would continue to perform the same duties.

b) Since the present foreman, being the senior employee, on the laborers' roster, would be the successful bidder under a bulletin.

c) Mr. Sonsteng would in no case be restored to service as he would still be junior to the employees working, even if the shift now worked by the foreman was bulletined.

d) In the circumstances, there is no basis for the claim in this case.

In line with the foregoing, the carrier believes your Board cannot do other than decline this claim.

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.

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

At Glasgow, Montana, during the period in question, the carrier had engine watchman work which was required to be performed around the clock, seven days a week. Work at this point had diminished considerably after diesels began supplanting steam locomotives. Prior to March 24, 1953,

when the switch-over was completed, Foreman Bliven performed minor items of mechanic's work on steam locomotives which tied up there. This was necessitated by the absence of mechanics who had been laid off earlier because of the steadily declining steam locomotive work. On and after the above-stated date, the watchman service was the only work performed at this point.

Bliven besides holding the position of Round House Foreman, stood number one on both the Machinist Helpers and Laborers seniority list at Glasgow. Claimant Sonsteng, a furloughed employe, stood number 5 on said seniority list. Under Rule 13 employes appointed to supervisory positions not covered by the schedule retain and accumulate seniority at point last employed, in this case, Glasgow. The rule further provides that when displaced or relieved from supervisory positions, they will be permitted to exercise their seniority at the point held to displace any employe their junior.

On April 13, 1953, the carrier bulletined two jobs as Engine Watchman, effective April 17, 1953. The third job, the day shift, was not advertised but was taken by Foreman Bliven, who continued service in the foreman classification. He retained little, if any, supervisory duties as he was the only employe engaged upon the day shift at this point.

While not questioning Mr. Bliven's preferred seniority rating, the Organization points out that by his promotion to a supervisory position he was acting outside of the scope of the Firemen and Oilers' Agreement except for purposes of retaining and accumulating seniority. Further, that to come back under that agreement and to be in a position to exercise seniority to displace any employe his junior, it argues, he must first be displaced or relieved from his supervisory position, which, he was not.

The carrier defends on two grounds. First, on the net result theory, i.e. that if the Organization's request had been acceded to, Bliven would have filled the same position and handled the same work but at reduced pay, and claimant would have not been able to work. Second, unlike the Mechanical crafts agreement, the Carrier points out, this Agreement does not restrict the foremen from performing work hence Bliven's properly occupied the position in his Foreman's capacity.

Neither answer suffices under the facts of this case. It is clear that under Rule 13, Bliven, as a condition precedent to his right to exercise seniority, must first have been displaced or relieved from his supervisory position. Irrespective of the net result, the organization is in position to insist upon observance of the agreement to the letter. Neither do we find that the Organization is attempting to obtain a Foremen's no work rule, as carrier suggests. That issue is not raised, involved or decided in this submission. The title of Foreman in this instance is one of form and not of substance. The carrier frankly concedes the real purpose for its continued use of the classification. What the organization contends and what we decide is simply that until Bliven conforms to the provisions of Rule 13, he possesses no right to the Engine Watchman's work, which, for the purposes of this case, must be considered as belonging to Firemen and Oilers.

We find that the agreement has been violated and therefore sustain paragraph one of the claim. Further, that until the carrier brings about compliance with Rule 13 thereof, Claimant Sonsteng shall be entitled to the compensation requested under paragraph 2 (d) of the claim, which is sustained in full at pro rata rate. We are not in a position to order the actions requested in paragraphs 2 (a), (b) and (c) of the claim.

AWARD

Claim sustained to the extent indicated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1955.

DISSENT OF CARRIER MEMBERS TO AWARD 1953

The majority state:

“* * * Neither do we find that the Organization is attempting to obtain a Foremen's no work rule, as carrier suggests. That issue is not raised, involved or decided in this submission. The title of Foreman in this instance is one of form and not of substance. The carrier frankly concedes the real purpose for its continued use of the classification. What the Organization contends and what we decide is simply that until Bliven conforms to the provisions of Rule 13, he possesses no right to the Engine Watchman's work, which, for the purposes of this case, must be considered as belonging to Firemen and Oilers.

“We find that the agreement has been violated and therefore sustain paragraph one of the claim. Further, that until the carrier brings about compliance with Rule 13 thereof, Claimant Sonsteng shall be entitled to the compensation requested under paragraph 2(d) of the claim, which is sustained in full. * * * ”

We find nothing in Rule 13 or any other provision of the agreement placing such limitations on what Foreman Bliven may do, incidental to his work as foreman. It was pointed out to the referee that this same System Federation 101 has an agreement with this carrier covering the mechanical section effective September 1, 1949.

Rule 42, Paragraph (a) of this agreement provides:

“None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except Foremen at points where no mechanics are employed.”

We find no such limitations in the agreement of the same date covering the work of Engine Watchmen. It is clear the referee has written a new rule not contemplated by the parties signatory to the agreement.

Award 1596 of this Division provides in part:

“The duties performed by engine firemen of which complaint is here made are not the exclusive duties of engine watchmen by rule or practice. * * * We are obliged to say that the rules do not give the questioned work exclusively to engine watchmen and that the organization has failed to establish that it belongs to engine watchmen exclusively because of any practice existing over the years.”

This award deals with the question of engine watchmen having exclusive rights to engine watchman work performed as here, by others incidental to their work in another capacity or craft.

The referee apparently concedes that Bliven was No. 1 on the seniority roster and if demoted or forfeiting his foreman's rank, could perform substantially the same work at a lower rate of pay.

In light of the foregoing, we believe the majority erred.

J. A. Anderson
D. H. Hicks
R. P. Johnson
T. F. Purcell
M. E. Somerlott