

Award No. 3304

Docket No. 2915

2-MI-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

MISSOURI-ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri-Illinois Railroad Company violated the controlling agreement when Carman G. A. Cox was furloughed and his work assigned to a working foreman at Salem, Illinois.

2. That accordingly, the Carrier be ordered to compensate Carman G. A. Cox eight (8) hours at the straight time rate for January 15, 1957 and as long as the violation continues.

EMPLOYEES' STATEMENT OF FACTS: At Salem, Illinois, a point located in Southern Illinois coal field, one (1) car inspector, namely, Mr. G. A. Cox, hereinafter referred to as the claimant, has been employed by the Missouri-Illinois Railroad Company, hereinafter referred to as the carrier, for many years. The employee herewith call your Honorable Board's attention to Bulletin No. 1, dated January 7, 1957, File: 74B-117, which was posted abolishing car inspector's job at Salem, Illinois, party affected: G. A. Cox, the claimant, and this bulletin is herewith submitted as employees' Exhibit A.

Following the abolishment of the claimant's job, Bulletin No. 9, dated January 7, 1957, File: 74-118, was posted, and we herewith refer your Board to employees' Exhibit B. This bulletin (No. 9) advertised a job for one (1) mechanical foreman with duties performing necessary work on locomotives, cars or other mechanical work. The claimant bid on this job which was his former position as he had been required to make necessary repairs on diesels, perform car inspection work and make light repairs. Therefore, the carrier by this action abolished the car inspector's job and put on a working foreman in his stead to perform the same work which has been previously performed by the claimant for many years.

This dispute has been handled with the appropriate officers of the carrier up to and including the highest officer so designated to handle such disputes, with the result that they have declined to adjust this matter.

The foreman at Salem is the only employe in the mechanical department located at that point and he has the authority of a supervisor and the same reliance is placed on him as that placed on supervisors generally. The foreman has general supervision over engine crews at Salem; he requisitions supplies from Bonne Terre for the repair and maintenance of cars and locomotives and is responsible for the supplies inventoried at Salem; he has the authority to order diesel engines to the shops at Sparta for repairs, he is responsible for the filing of reports and the making of inspections required of the mechanical department at Salem and has the authority to verify his own time card. In general, the officers of the carrier have invested the foreman with the authority of a supervisor and he is charged with the responsibility of a supervisor. However, the volume of work at Salem is such that the foreman has time to perform the work of the various shop crafts, which work assignment is clearly permissible under the agreement with The American Railway Supervisors' Association, Inc. and Rule 11 of the agreement between the parties to this dispute.

In conclusion, the carrier states that the work assignment in dispute here is reasonable and necessary to the safe and efficient operation of the railroad and is not prohibited by or in violation of any provision of the collective bargaining agreement. On the contrary, the Rules 11 and 26 clearly recognize the right of the carrier to assign the work in the manner followed in this case.

There is no agreement support for the instant claim and for the reasons fully set forth above 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 employees 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 were given due notice of hearing thereon.

The provisions of Article VII of the Agreement of August 21, 1954, did not remove or impair the force and effect of Rule 11 of the Agreement of September 1, 1949. Article VII deals with a situation where a mechanic is on duty and Rule 11 provides that a foreman may perform work where mechanics are not employed. The record supports the view that the carman's position at Salen, Illinois, was abolished because volume of work did not justify retention of two employes at that point. The carrier is not required by the agreements to retain a position when there is not sufficient work available to justify it. No violation of the applicable agreements being shown this claim lacks merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

DISSENT OF LABOR MEMBERS TO AWARD NO. 3304

The exception in Rule 11 is not applicable where mechanics are employed. In the instant case the employed mechanic was deliberately laid off and arbitrarily replaced by a foreman. The fact that Rule 8(a) prescribes that "When the force is reduced, seniority as per Rule 10 will govern . . ." is indicative of the fact that it is not the intent of Rule 11 to permit the carrier to DISPLACE an employe with a foreman.

James B. Zink

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner