Award No. 4688
Docket No. 4429
2-UP-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That the Carrier violated the controlling agreement, particularly Rule 19 thereof, when they assigned Coach Cleaner V. Slipich to Passenger Car (Painter and Upholsterer) Foreman.

(2) That, accordingly, the Carrier be ordered to pay Carman Painter C. J. Ferrera the difference between the regular mechanics rate of pay, which he has received, and the pay which he would have received since January 8, 1962 had he been properly assigned to regular Passenger Car Foreman position.

(3) That V. Slipich be removed and a qualified mechanic be assigned to this supervisory position.

EMPLOYES' STATEMENT OF FACTS: Carman Painter C. J. Ferrera, hereinafter referred to as the claimant, is regularly employed as carman painter by the Union Pacific Railroad Company, hereinafter referred to as the carrier at Los Angeles, California.

On January 8, 1962 Coach Cleaner V. Slipich vacated his Coach Cleaner Foreman's position and was assigned to a regular position of Passenger Car Foreman supervising Mechanics (both Painters and Upholsterers). Mr. Slipich holds a seniority date as Coach Cleaner of 9-28-39 and Coach Cleaner Foreman date of 4-1-42. He has no seniority or experience whatever as a Mechanic.

Regular mechanics having had both experience as mechanics and foremen were available for the assignment. No consideration or preference was given these mechanics as two of these employes have been promoted since and all were available on January 8, 1962 if the opportunity had been given them.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest officer of the carrier, all of whom have declined to make satisfactory adjustment.

The claim 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.

Parties to said dispute were given due notice of hearing thereon.

Although the same Claimant is involved in Dockets 4428 (Award 4680) and 4429, the facts and governing rules are different.

On January 8, 1962, the Carrier assigned Coach Cleaner Foreman V. Slipich to a regular, permanent, bulletined Passenger Car Foreman's position in the Carrier's Coach Yard at Los Angeles, California. Mr. Slipich holds a Coach Cleaner Foreman's seniority date of April 1, 1942, and a Coach Cleaner's seniority date of September 28, 1939.

The Claimant, Carman Painter C. John Ferrara, holds a Carman's seniority date of October 13, 1954, but has no seniority as a Foreman although he did work as a Painter Foreman from May 10, 1961 to June 8, 1961.

The Organization contends that the Carrier's action violated Rules 19 and 34 of the controlling Labor Agreement, because regular mechanics, who also had experience as Foremen, were available and were qualified for the assignment in question.

The Carrier contends that the Claimant holds no seniority as a Foreman, did not even bid on the advertised position and that no rules of the Shop Crafts Agreement were violated. The Carrier further contends that its action was proper and in accordance with the provisions of the American Railway Supervisors' Association's Agreement, which Association is the duly designated representative of Foremen in the Carrier's Mechanical Department.

The Rules of the Labor Agreement cited by the Organization read as follows:

"RULE 19.

Mechanics in service will be considered for promotion to positions of foremen.

When vacancies occur in positions of gang foremen, men from the respective crafts will have preference in promotion.

It is the policy of the company to promote its own men, and only when competent employes in the ranks are not available or will not accept vacancies or new positions, will the company vary from this policy."

"FOREMANSHIP — FILLING TEMPORARILY

RULE 34.

Should an employe be assigned temporarily to fill the position of a foreman, he will get the foreman's rate. Said position shall be filled only be mechanics of their respective craft in their department."

Rule 34, as is evident, pertains to "filling temporarily" Foremen's positions. Therefore, it has no application to a dispute involving the permanent filling of a Foreman's position.

Rule 19 pertains to the **promotion** of Mechanics to Foremen's positions. Therefore, it has no application whatsoever to the **transfer** of a Foreman from one Foreman's position to another.

It seems to this Board that the action complained of by the Organization is a Management prerogative, because no rule of the controlling Labor Agreement covers the transfer or promotion of a Foreman from one permanent Foreman's position to another permanent Foreman's position.

Accordingly, we must deny the Organization's claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1965.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4688

We agree with the majority that Rule 19 "has no application whatsoever to the **transfer** of a Foreman from one Foreman's position to another * * * no rule of the controlling Labor Agreement covers the transfer or promotion of a Foreman from one permanent Foreman's position to another permanent Foreman's position" * * * and "Rule 19 pertains to the **promotion** of Mechanics to Foremen's positions * * * " therefore, we are at a loss to understand why the majority did not sustain the claim that Coach Cleaner V. Slipich (who was not a mechanic) should be removed from the foreman's position and a qualified mechanic assigned thereto in accordance with Rule 19, reading in pertinent part "Mechanics in service will be considered for promotion to positions of foremen."

E. J. McDermott

C. E. Bagwell

T. E. Losey

R. E. Stenzinger

J. B. Zink

REFEREE'S REPLY TO ORGANIZATION'S DISSENT TO AWARD NO. 4688

Fact: No rule of the controlling Labor Agreement covers the transfer promoted Coach Cleaner Foreman V. Slipich to a regular, permanent, bulletined Car Foreman's position.

Fact: The record undeniably reveals that the Carrier transferred or or promotion of a Foreman from one permanent Foreman's position to another permanent Foreman's position.

Fact: That portion of Rule 19 — which reads:

> "Mechanics in service will be considered for promotion to positions of foremen."

has no application whatsoever to this dispute.

Fact: The Organization's dissent is inconsistent and in error.

J. Harvey Daly
Referee