

**Award No. 4762**

**Docket No. 4590**

**2-IHB-CM-'65**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 103, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**INDIANA HARBOR BELT RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1 — That the Carrier violated the Agreement, particularly Rules 1 and 18 when on March 20, 1961, it posted for a bid a job which would assign an employe for a week's work, two days of which would be at work as a "relief inspector foreman" and three days of which would be work as a "car repairer."

2 — That the Carrier be ordered to abrogate and withdraw the Bulletin (No. 29) which posted this bid.

**EMPLOYEES' STATEMENT OF FACTS:** There is a working agreement between the Indiana Harbor Belt Railroad and System Federation No. 103, which the carmen's craft is a party.

There is also a working agreement between the Indiana Harbor Belt Railroad and the supervisors.

The bulletin as posted combines positions subject to two separate working agreements, which reads as follows:

**"BULLETIN NO. 29**

**ALL CAR DEPARTMENT EMPLOYEES:**

The following position is open for bid per Rule 18 assignment 5 days per week Rule including 20 minutes for lunch period.

Car Repairer job #16 — #136 days off Wed. & Thurs. Car Repairer 1st trick rip track Mon., Tues., Fri. Relief Inspector — Foreman 1st trick Sat., Sun.

Bids to be in my office on or before 8:00 A.M. March 27, 1961. W. Miller to cover till bids are in.

D. Trigg  
General Foreman"

### Locations and Number of Position

Year	Blue Island	Calumet Park	Norpaul	Gibson	West Gibson
1951	1		1		1
1952	1		1		1
1953	1		1		1
1954	1	1	1		1
1955	1		1	1	1
1956	1		1	1	1
1957	1		1	1	1
1958	1		1	1	1
1959	1		1		1
1960	1				1
1961	*2				1

\*One of these positions was abolished in March 1961.

It has always been the practice to provide rest day relief for a foreman's position, that cannot be covered by a 5-day assignment of foremen, through use of shop craft mechanics as foremen the number of days necessary. The 3 day carman — 2 day inspector foreman position that was advertised on March 20, 1961 by Bulletin No. 29 was such a position.

This relief position was advertised so that the bidders would know the positions to be covered, the work days and the tour of duty each of those workdays that were in the assigned workweek.

In his letter the local chairman did not protest the combination mechanic-foreman position until the general chairman contended it was "illegal". The local chairman's statement in the second sentence of that letter, plus the fact that between March 20, 1961 and May 2, 1961 no objection to the position was raised, and that for more than 10 years such combination relief positions had existed, would imply that he had not objected to such combination mechanic-foreman positions. In his letter the local chairman stated that a copy of Bulletin No. 29 was furnished the general chairman only because of "certain things that have come up concerning this job", but which the local chairman failed to describe.

This local chairman, who had held that position for many years, had never before the instant dispute contended the practice was improper. Such a long period of acquiescence indicates he approved the arrangement.

The carrier submits that the instant claim should be denied because it is without agreement support. Carrier has further shown that past practice was not contrary to any rule of the agreement in effect on the property and was without protest for more than 10 years, which indicates acceptance by the organization of carrier's action.

**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.

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

This combination assignment, posted on March 20, 1961, was discontinued on June 18, 1962, but the Claim is that it violated Rules 1 and 18.

Since nothing in the Agreement expressly forbids this type of assignment, the question is whether the Agreement, and particularly Rules 1 and 18 thereof, forbid it by implication.

Rule 1 provides that for all employees coming under the provisions of the Agreement, eight hours shall constitute a day's work and forty hours a week's work. The reference, of course, is to the work contemplated by the Agreement.

Rule 19 deals specifically with the promotion of mechanics in service, including carmen, to foreman's positions without loss of mechanics' craft seniority, and while the title to Rule 34 and the text of Rule 34(a) use the word "temporarily", the rule clearly recognizes the permissible performance of foremen's work by carmen and other mechanics. Such work certainly tends to facilitate their qualification for such promotions; but whether intended for that purpose or not, the rule expressly permits it, so that it cannot be construed as lying outside of the work comprehended by either the eight hour day or the forty hour week. Whether its inclusion is objectionable to the foremen's organization, or is claimed to be in violation of their agreement, is not before us.

While the Agreement of course relates primarily to mechanics' work and only incidentally to foremen's services, we can find nothing in it which expressly or by implication forbids the inclusion of both kinds of work in posted assignments. Certainly, neither Rule 1 nor Rule 18 does so. We cannot, therefore, find that the bulletin violated either of those rules.

The parties' allegations are in direct conflict as to whether past practice has recognized the propriety of such assignments, and we have an unresolved question of fact in that regard. However the point is not material in the absence of any ambiguous provision which can be construed as impliedly forbidding such assignments.

#### AWARD

Claim denied

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.