

**Award No. 5526**  
**Docket No. 5344**  
**2-NJ-OCAW-'68**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

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**PARTIES TO DISPUTE:**

**LOCAL UNION 8-182**  
**OIL, CHEMICAL AND ATOMIC WORKERS**  
**INTERNATIONAL UNION**

**NIAGARA JUNCTION RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

Whether or not the company had the right to remove the position of Car Inspector-Repairman from the bargaining unit.

**EMPLOYEES' STATEMENT OF FACTS:** On May 2, 1966, a conference was held pertaining to the above dispute. On May 13, 1966, the company sent the Local Union a letter stating that the position of Car Inspector-Repairman was abolished.

It was further stated by the company that they intended to do the above work by non-bargaining unit employees namely supervisors and checkers.

**POSITION OF EMPLOYEES:** That this job has been done by bargaining unit employees for at least twelve (12) years or more. The following bargaining employees performed on the job as follows:

1. Thomas Giles from 1954 to 1960.
2. John Bush from 1960 to 1965.
3. Richard Butler from 1965 to the abolishment.

Also during these periods of times, Mr. Frank Baldassare and Mr. Louis Adamo, who were blacksmiths, assisted on this work.

To further show that this job is still in existence the Union would like to point out that Mr. Arthur Briglio, who is classified as a Burner, has been used on the aggrieved job on the following dates:

June 23, 1966  
June 24, 1966  
June 27, 1966  
June 29, 1966

## SECOND DIVISION AWARD 4844 (Johnson)

"It has long been recognized that in the performance of its service the Carrier has all powers not forbidden by law nor relinquished by contract, and that it necessarily has the right to determine in good faith the qualifications of its employees."

## SECOND DIVISION AWARD 3630 (Carey)

"It is a fundamental principle of the employer-employee relation that the determination of the manner of conducting the business is vested in the employer except as its power of decision has been surrendered by agreement or is limited by law. Contractual surrender in whole or in part of such basic attribute of the managerial function should appear in clear and unmistakable language [sic]."

Your Board has held in many awards that a claim will have to be denied when not supported by a rule. In Award No. 3672 with Referee Mitchell, it was stated in part in the Findings:

"In the absence of a rule in the agreement which would support the penalty claims, they will have to be denied."

Management's right to create or abolish the position in question is without limitation. Its right to control direction of its work force is complete except to the extent it limits that right by agreement. There is no such limitation on any of the jobs covered by the subject agreements. Certainly there can be no such limitation on jobs outside the scope of any agreement such as is the fact in the instant case.

## CONCLUSION

Carrier submits that:

Carrier has shown that the position in dispute does not come within the scope of any schedule agreement or agreements with the employees and therefore is outside their jurisdiction.

Carrier's right to control its work force in accordance with sound economic principles is without question and is limited only by specific agreement with its employees. No such agreement exists.

The claim is without sound basis and merit and should be denied.

(Exhibits not reproduced.)

**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 waived right of appearance at hearing thereon.

In the Organization's submission of this claim before the Board, it alleges that the Carrier did not have the right to remove the position of Car Inspector-Repairman from the bargaining unit. The Organization in its brief submission of the claim and in support of its position did not allege or cite any Rule or Article of the Bargaining Agreement that was violated.

Carrier's position is that the position of Car Inspector-Repairman is not and has never been subject to or within the scope of any agreement with the Organization; that the Organization failed to cite a schedule rule violation; that the Board is without jurisdiction because the position in question is not included in the agreement in effect governing this Carrier; that the abolishing of an unnecessary job is exclusively the function of management.

A close examination of the record reveals that the Organization failed to cite a specific rule or provision of the two agreements governing Engine House and Line Service Employees and Maintenance of Way Employees that Carrier is supposed to have violated in this instance. In fact, Carrier through its Superintendent, Evan Maulis, Jr., on two occasions requested by letters, dated October 7, 1966 and October 14, 1966, addressed to the local president, Constantino D. Matorazzo, to be advised which specific rule in either of the two agreements was violated. Finally, after failing to specify a rule that was violated in either of the two agreements, the local president replied by letter, dated October 26, 1966, that the position in question was not found in either agreement but that the job was brought into the bargaining unit as verbally agreed to by the Carrier's Superintendent and other officials and the Organization's representatives.

No evidence was adduced by the Organization in support of its contention that an oral agreement was consummated bringing the position in question within the purview of either of the two agreements covering Maintenance of Way Employees and/or Engine House and Line Service Employees. Mere allegations without proof are of no probative value.

The burden is on the petitioner to specify the rule or rules that are allegedly claimed to have been violated. Failing to do this, we therefore cannot adjudicate the merits of the claim and are compelled to dismiss the claim.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1968.

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