

Award No. 5992

Docket No. 5825

2-GN-(CM)-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Carman Helper John Duetsch was improperly used to temporarily fill the position of Rip Track Foreman James M. Darst while he was off on vacation from December 26 through December 29, 1967.

2. That accordingly, the Carrier be ordered to additionally compensate Freight Carman William Rasmussen the difference between what he earned as a Carman and what he would have earned if assigned to fill the position of Rip Track Foreman James Darst during the period he was on vacation.

EMPLOYEES' STATEMENT OF FACTS: At its Jackson Street Freight Repair Track, St. Paul, Minnesota, the Great Northern Railway Company, hereinafter referred to as the carrier, employs Carman-Helper John Duetsch to supervise the laborers on the repair track. When Assistant Car Foreman James Darst took a vacation from December 26 to December 29, 1967, both dates inclusive, the carrier assigned Carman-Helper John Duetsch to fill the position of Assistant Car Foreman.

Carman William Rasmussen, hereinafter referred to as the claimant, is regularly assigned as a freight carman Monday through Friday with rest days of Saturday and Sunday, and was available to fill the vacation period of Foreman Darst.

POSITION OF EMPLOYEES: It is respectfully submitted that under the clear and specific language of Rule 45 of the current agreement, which reads, in pertinent part:

"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 by Mechanics of their respective craft in their department."

both the better-reasoned precedent and past practice support the carrier's position in this dispute. The Board is respectfully requested to so recognize these prevailing factors and deny the instant claim in its entirety.

D. ARGUMENT ON REMEDIES

Even if this Board should find that Rule 45 was violated by the Carrier in this case, the claimant does not qualify for the damages sought in his behalf by the organization. As explained in the Statement of Facts, the claimant held a regular assignment in the air brake shop during the four dates involved in this claim and, therefore, could not possess any bulletin or contractual rights to service at the Jackson Street Shops repair track where this dispute arose. As a result, the claimant was not in a position to qualify for the service claimed or the damages being demanded here.

It should also be disclosed that the claimant performed service on each of the dates involved in this dispute and was properly and fully compensated therefor. He has since retired from the carrier's service.

THEREFORE, THE CLAIM OF THE ORGANIZATION IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. The organization has not produced sufficient evidence to prove the validity of its claim.
2. The organization's claim is lacking both factual and contractual justification.
3. The organization's claim is contrary to sound and well reasoned precedent.
4. The organization's claim is contradicted by its conduct herein as well as during the past.
5. The claimant cannot qualify for the damages sought in his behalf by the organization.

For the foregoing reasons, the Carrier respectfully requests the claim of the employees 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 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.

The facts are not in dispute: Carrier, during the vacation period of an Assistant Car Foreman, filled the position with a yard foreman who did not qualify as a Mechanic of the Carmen's craft.

The Organization contends that this was in violation of Rule 45, which states:

"RELIEVING FOREMAN

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 by mechanics of their respective craft in their department.

When a foreman has supervision over two or more crafts, such position may be filled from any of the crafts involved."

Rule 82 of the Agreement requires either an apprenticeship or four years' experience at Carman's work to qualify as a mechanic. The yard foreman used by Carrier to fill the vacation vacancy worked as a Mechanic for less than the four-year period.

Carrier takes the position that Rule 45 has application only when the selection comes from employes covered by the Agreement; and, since Supervisors (the yard foreman, in the instant dispute) are not covered by the Agreement, Carrier was not in violation of Rule 45 when it assigned the yard foreman to fill the vacation vacancy. Carrier refers the Board to Rule 8 of the Agreement, which makes it evident that supervisory personnel were not intended to be covered by the Agreement.

It is clear that the application of Rule 45 is limited to a determination of rights between employes coming within the scope and purview of the Agreement. Its application and interpretation must be reconciled with Carrier's prerogative to utilize its supervisory personnel who are not part of the bargaining unit represented by the Organization.

Put in proper and meaningful perspective, Rule 45 is conditional. That is to say, if Carrier chooses to assign an employe **covered by the Agreement** to relieve a foreman temporarily, then it is obligated under the rule to fill the assignment with a mechanic. The rule begins: "**Should an employe** be assigned temporarily * * *." The rule cannot be construed as preventing Carrier from assigning supervisory personnel not covered by the Agreement to relieve a foreman.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1970.

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