

A W A R D

Item 1 - Claim sustained

Item 2 a - Claim sustained to extent of wage loss suffered.

Item 2 b - Disposed of as above stated

Item 2 c, d, e, Claims Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July, 1974.

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (International Association of Machinists and
Aerospace Workers
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the Controlling Agreement, the Carrier damaged Machinist J. P. Arnold, when they abolished a Supervisor position of the 3:00 P.M. to 11:00 P.M. shift and assigned him to perform said work without the adjustment in pay.
2. That accordingly the Carrier be ordered to compensate the Claimant the adjustment in pay at the pro rata hourly rate from that of a Machinist to a Supervisor, for the dates of January 28, 29, 30, February 1, 4, 5, 6, 8, 11, 12, 13, 14, 15, 18, 19, 1972.

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.

Claimant is a regularly assigned machinist at the Connellsville Shops which the Carrier describes as primarily a running repair and dispatching point on the Pittsburgh Division. Prior to February 1, 1972, an Assistant Engine House Foreman was assigned to the first and second shifts and two non-contract General Foreman worked the first and third shifts. The third shift General Foreman retired on February 1, 1972. According to the Carrier, he was not replaced because of the drastic decline in handling coal tonnage which resulted from ecological concerns in the use of coal. Instead, the contract covered Assistant Engine House Foreman's position on the second shift was abolished and he was assigned to the third shift. As a result, no position and no

person under the Supervisor's Agreement was assigned to the second shift. The Carrier also states that work was rearranged to best utilize the services of the supervisors assigned to the first and third shifts. However, the relief supervisor for the rest days of the supervisors on the first and third shifts worked the fifth day of his assignment on the second shift. Claimant states that except for the one day worked by the relief supervisor, he was performing the supervisory duties on the second shift and was entitled to the rate of pay of a supervisor.

The Petitioner's Submission states that he was instructed by General Foreman Keenan to telephone the Chief Dispatcher at Pittsburgh every two hours relative to dispatchments, log inbound and outbound locomotives for dispatchments, direct the movement of locomotives on the ready track so that they could be made ready and dispatched in the proper sequence and on time.

The Carrier's Submission states that the first shift operation in addition to dispatching power performed form and maintenance work on assigned switcher units and also running repairs on road locomotives requiring house attention, and that this type of work required direction from experienced and knowledgeable supervisors. The third shift in addition to dispatching power, also prepared 24 hour delay reports for the Pittsburgh Division, figures on shopped locomotives, derailment reports, status of units moving in trouble etc., and entering such information on the various code-a-phones located at Huntington, Pittsburgh and Cumberland, before 7 A.M. on each tour of duty. Also, because the third shift did not include an electrician, decisions were made on disposition of locomotives with electrical items reported by inbound engineers. The second shift operation was set up for dispatchment of locomotive consists only, which was routine and repetitive and thus did not require any direct supervision. The number of units for each consist and which units were to be used in a consist was determined by the Chief Dispatcher of the Yardmaster. The information was relayed by phone or intercom to the Locomotive Department Office. The General Foreman told each of the four employes, including claimant, to answer the phone and intercom to receive information from the General Foreman or Yardmaster regarding locomotive consists for outbound trains, and that whoever received the information should note it on the dispatchment board and tell it to the other 3 employes; that this function was not assigned to claimant exclusively; that such communication is not exclusively a function of a supervisor.

It is noted that the claim made on the property, Employee's Exhibit A, refers to the instruction to phone every two hours for information, to log this and to inform the other employes. In the Submission, Petitioner has added the function of directing locomotive movement on the ready track so that they can be made ready and dispatched in the proper sequence and on time. It is elementary that we are limited to the positions of the parties in the handling on the property.

The Carrier opposed the claim on two grounds namely: That Rule 13 relied upon by Petitioner which provides for higher pay in performing higher rated jobs is a Shop Crafts Agreement not applicable to this situation because it covers only higher rated Shop Crafts work under that Agreement. It does not refer to supervisor's positions or to any other Agreement. In any event, claimant was not responsible to direct movements on the ready track and the on time readiness and dispatching of consists, only to perform according to information received by telephone.

Regardless of the technical defense, it is clear that the Carrier does not want claimant to accept the duties and responsibilities of a supervisor. The Carrier insists that it wants each of the four employees assigned to the second shift to perform only their regular duties pursuant to information given over the telephone. If the Carrier wants to operate in this manner on this shift without a supervisor present to give instructions and to be responsible for carrying out the instructions that is its prerogative. The absence of a supervisor does not automatically make any employee a supervisor. According to the Carrier, it expects each employee to perform his duties properly according to telephoned instructions, nothing more.

If the Carrier wished to elevate the employees to supervisory positions, that must be demonstrated by positive proof, not by inference or assertion. The petitioner has the burden of such proof.

The Record indicates only that claimant has concluded that his position is supervisory. The Carrier disputes this and it is not for this Board to judge what may be intended from other than demonstrated objective standards. For example: The Record does not disclose the former supervisor's duties and responsibilities on this shift so that we may determine that the claimant is now performing his supervisory function; nor does the Record indicate the extent of the work done on the second shift before the supervisor's position was abolished and the work rearranged with the first and third shifts which are now under supervision.

We find that taking instruction over the phone, noting the information and relaying it to the other employees assigned, is not supervisory work. No claim has been made or facts set forth to prove that this is the work of any higher paid job in the Shop Crafts Agreement. The Petitioner has failed to sustain the burden of proving its claim; Second Division Awards No's. 5297, 6122, 5340, 6467; Third Division Awards No's. 12008, 13031, 16439.

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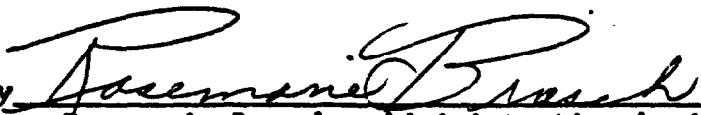
Claim Denied.

Form 1
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Award No. 6755
Docket No. 6542
2-B&O-MA-'74

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By Order of Second Division

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