

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

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
(  
( Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That the Chicago and North Western Transportation Co., hereinafter referred to as the Carrier, violated the Controlling Agreement, when on June 1, 1975, at Altoona, Wisconsin Enginehouse, it improperly created three (3) Working Foremen positions, immediately following the abolishment of three (3) regularly assigned Foremen positions at this point.
2. That the Carrier be ordered to compensate the following named Altoona, Wisconsin furloughed employees, hereinafter referred to as Claimants, (a) Machinist Louis Mnikolalcik whose work duties were improperly assigned to be performed by Working Foreman Newell Pettis, (b) Machinist Michael N. Fenske whose work duties were improperly assigned to be performed by Working Foreman Robert E. Huffman, (c) Machinist Allan J. Larson, whose work duties were improperly assigned to be performed by Working Foreman Robert E. Martin, said compensation to be in the amount of eight (8) hours straight time and thirty (30) minutes time and one-half Machinists' rate of pay, plus payment for the equivalent amount of additional overtime, if any, that is worked by the respective Working Foremen, commencing with an including June 1, 1975, until July 31, 1975, inclusive.

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 waived right of appearance at hearing thereon.

We deal here with the changed assignments of employes at Altoona, Wisconsin engine house of Carrier. The changed operations through Altoona became necessary because the number of units laying over at that point was greatly reduced. At the completion of assignment May 31, 1975 fifteen (15) jobs were abolished. In lieu of these, new assignments were made effective June 1, 1975: 3 working foremen, 2 machinists; and 2 electricians. These jobs continued through July 31, 1975 when they were abolished as of the completion of assignment, effective August 1, 1975. Thereafter the force at Altoona enginehouse was: 3 mechanics in charge.

The claim arises because the position of working foremen were created allegedly contrary to the provisions of Article III. The Memorandum Agreement effective October 1, 1972 between the parties provided in pertinent part:

"It is further agreed that position classified as working foremen presently coming under one of the agreements with the Federated Crafts Organization will be reclassified to Mechanics-in-Charge positions and placed under provisions of the Mechanics-in-Charge Memorandum Agreement as contained in the C&NW agreement."

The Organization argues the Carrier violated the agreement when it utilized foremen during the period June 1, 1975 through July 31, 1975 as working foremen. The Carrier contends this may be so but these same individuals Huffman, Larson and Martin would have been designated Mechanics-in-Charge on June 1, 1975 and would have continued that assignment through July 31, 1975 because, Carrier continues, they are the senior employes entitled to the newly created position, not the claimants.

The Organization relies on Awards 2586 (Shake) and 4557 (Williams) where this Board held the Carrier violated agreement provisions similar to the one involved here where working foremen positions were established and they performed the work that belonged to claimants. We believe the situation here is somewhat different. Carrier's contention is unrebutted that Huffman, Larson and Martin were the senior employes and they would have survived the reduction in force as of June 1, 1975 whether their title was Machinist-in-Charge or other. Moreover, there was no change in job content here. On this basis we fail to see how the claimants were harmed. On the record it does not appear they were deprived of earnings' opportunities and Carrier's suggestion that it would amount to a penalty to award compensation to them is well taken.

We agree the Carrier was wrong in designating these employes as working foremen and on this basis we sustain the first claim. But not every wrong carries with it compensatory damages unless proven. In this instance such an award would amount to a windfall for the recipients and a penalty for the Carrier, neither of which is authorized by the agreement. It follows the second claim is denied. See Awards 7379 (Weiss) and 6711 (Shapiro).

A W A R D

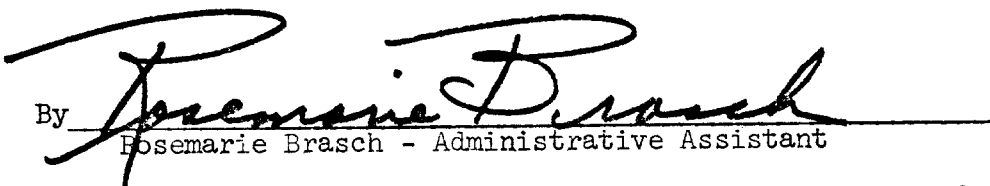
Claim 1 is sustained.

Claim 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April, 1978.