

The Second Division consisted of the regular members and in addition Referee Carlton R. Sickles when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Southern Railway Company

Dispute: Claim of Employes:

1. That the Carrier improperly abolished Carman A. L. Hall's position at Macon, Georgia and filled the position with a junior carman.
2. That accordingly the Carrier be ordered to pay Carman A. L. Hall the difference between what he was paid and what the junior carman was paid on August 11, 12 and 19 and September 9, 10, 16 and 17, 1978, and on any date thereafter that the junior carman was used on Carman Hall's position, until Mr. Hall is returned to his position.

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 were given due notice of hearing thereon.

In 1970, the carrier established a position and assigned the work to the claimant which provided that he work as a carman on Monday, Tuesday and Wednesday and that he provide relief as a repair track foreman on Saturday and Sunday. The position was abolished in 1978 as a result of the determination by the carrier that a furloughed foreman was contractually entitled to the foreman relief work under the carrier's agreement with The American Railway Supervisor's Association.

The furloughed foreman, Mr. Shipp, had established seniority as a foreman. The claimant had not established such seniority. The question of the claimant's seniority as a supervisor was adjudicated in Fourth Division Award 3029. In that instance, The American Railway Supervisor's Association objected that the carrier had not established a seniority date for the claimant therein. The Board, in Award 3029, ruled that even though the two days as the supervisor was a permanent assignment, that this did not make the position a regularly assigned foreman assignment and without such regularly assigned foreman assignment seniority would not accrue.

A review of the agreement between the parties herein does not disclose any

basis upon which the incumbent can establish a contractual right to this position in preference to Mr. Shipp who had acquired supervisor's seniority. Rule 23(a) provides that mechanics in service will be considered for promotion to positions of foreman and Rule 43 provides that if an employe be assigned temporarily to fill the place of a foreman, he should be paid the foreman's rate and fulfill all duties of the position. These two provisions, however, do not grant to the claimant a right to this position which is covered by the terms of the agreement between the carrier and The American Railway Supervisor's Association. Rule 20 of said agreement provides as follows:

"(a) Where there are temporary vacancies in positions of foremen of sixty (60) calendar days or less, such positions, if filled, may be filled by employees other than foremen covered by this agreement; provided, however, qualified furloughed foremen or employees having established seniority as foremen under paragraph (c) Rule 2, shall be given preference to such temporary work."

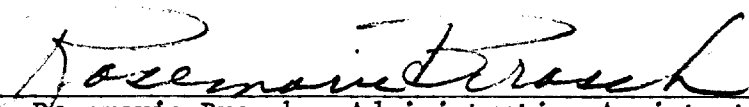
Since the claimant has not established seniority in the position of supervisor he may be replaced by a supervisor with seniority for the temporary assignment which he has been fulfilling and, therefore, we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.