

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(International Association of Machinists and Aerospace  
( Workers

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Seaboard Coast Line)

STATEMENT OF CLAIM:

1. That CSX Transportation, Inc. violated Rule 16, but not limited thereto, of the controlling Agreement when it appointed a Supervisor of Work Equipment (Foreman) at Hamlet Roadway Shops without giving preference or due consideration to the Mechanics in service from the respective crafts.

2. That accordingly, CSXT be ordered to pay senior Machinist R. L. Hildrath the difference between his rate of pay as a Machinist and the higher Foreman's rate effective February 16, 1986 and continuing for as long as the above violation continues.

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 employees 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.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

The Organization claimed the Carrier violated Rule 16 which states:

"Mechanics in service will be considered for promotion to positions of foremen.

When vacancies occur in positions of gang foremen, men from their respective crafts would have preference in promotion."

and Rule 29 which states:

"Should an employee be assigned temporarily to fill the place of a foreman, he would be paid his own rate--straight-time rate for straight-time hours and overtime rates for overtime hours--if greater than the foreman's rate; if it is not, he will get the foreman's rate. Said positions shall be filled only by mechanics of the respective crafts in their department. (See 1952 Letter Agreements--Appendix 'O')"

The Organization stated the Carrier violated the rules by appointing a supervisor of work equipment without giving preference and due consideration to mechanics in service from their respective crafts. The Organization noted that the Carrier has not denied that it failed to consider those of the respective crafts. It has been a past practice to fill supervisory positions from the crafts in accordance with Rule 16. On February 1, 1986, the Carrier promoted an employee who never worked as a mechanic, but worked as a Maintenance of Way employee under a separate agreement. The Carrier failed to interview or consider any mechanic. Supervisors of work equipment are gang foremen as it is the first promotion from the craft position and there is no other position identified as gang foreman. The fact that this is a non-contract position is immaterial to the dispute, and the Organization concluded by stating that a foreman by any other name is still a foreman, and the Carrier has not disputed the fact that the Claimant was qualified and eligible to be promoted to the foreman's position.

The Carrier argued this was a non-agreement supervisory position, and Rule 29 does not apply since this is a permanent, not a temporary, position. The Carrier claimed it considered the relative capabilities of all available to it and simply promoted the most qualified. The Carrier stated it did not violate Rule 16 and that the Organization has not shown that the Claimant was entitled to preference over any other employee in this case. The Carrier cited a number of precedent setting awards in support of its position, and, therefore, stated that the Board should deny the claim in its entirety.

The Board finds that the Maintenance of Way employees are a recognized craft. The position in question is exempt from the contract, and the Organization has not been able to show that it is part of the contract. In Award #4 of Public Law Board 3898, involving the Carmen and the Seaboard System Railroad, a predecessor of the Carrier in this case, the Board found that agreements between contract employees and the Carrier do not affect the relationship of the Carrier to its non-contract or exempted supervisory employees. The Board finds that Rule 29 does not apply to this case in that the position is a permanent one, and there was no showing that in fact the Carrier did not consider members of the craft when making its decision. Therefore, the claim will be denied.

Form 1  
Page 3

Award No. 11605  
Docket No. 11492-T  
88-2-87-2-144

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
BY Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1988.