

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12712
Docket No. 12568
94-2-92-2-91

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

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association)
(CSX Transportation, Inc. (former Baltimore and Ohio Railroad))

STATEMENT OF CLAIM:

- "1. The Carrier violated the current and controlling agreement and in particular Rule 1, Scope Rule of said agreement, when they abolished the Sheet Metal Worker Foreman's position held by Sheet Metal Worker David McKee on March 29, 1991.
2. That accordingly, the Carrier be ordered to re-establish the Foreman's position and further be directed to compensate Mr. McKee the difference in salary that he is drawing as Lead Man as opposed to his salary as a Foreman, which was decreased as a result of his job abolishment."

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.

By letter dated May 6, 1991, the Organization filed claim alleging Carrier violation of the Scope Rule of the Agreement. The Organization alleged that on March 29, 1991, the Carrier abolished a Foreman's position and in violation of the Agreement created a new position:

"....under a different title covering relatively the same class of work for the purpose of reducing rates of pay or evading the application of these rules."

The Organization maintains that Carrier's action of changing Claimant's position from Foreman to Lead Mechanic with the corresponding reduction in pay was a Scope Rule violation.

The Carrier denies any Scope Rule violation and maintains that the complained of action was permissible under the June 30, 1977, Agreement. That Agreement permitted the Carrier to establish Lead Sheet Metal Worker positions with limited supervising (Fourth Division Awards 2010, 3310 and 3403). The Carrier notes that the Foreman's position once supervised 12 to 15 employees and now employs only four employees covering two seniority districts. The Carrier also submitted a June 30, 1977 Agreement in support of its position on the merits.

However, before this Board and in ex parte the Carrier argues that the Claim is procedurally deficient. It is the position of the Carrier that the instant claim involves Supervisors and is thereby not properly before the Second Division. The Organization contends that this constitutes new argument which was not presented on the property and that the Claim is properly before the Board.

Careful consideration has been given to all arguments herein before the Board. The procedural issue before us may be raised at any time (Fourth Division Award 4871). The jurisdiction of the Board is explicitly limited by Section 3, First (h) of the Railway Labor Act, as amended. The Second Division has jurisdiction over disputes involving Sheet Metal Workers, but this employee is not properly covered by the Agreement Rule protecting his class or craft before us. The Railway Labor Act was not constructed to provide jurisdiction dependent upon Organization, but upon class or craft. The Scope Rule of this instant dispute, as well as the facts at bar concerning the Claimant are covered by the Foremens' Agreement. The Claimant is a supervisory employee "over which jurisdiction is not given to the first, second, and third divisions" by the Railway Labor Act. As the instant Rule covers a contract Supervisor, the Board is precluded from consideration of the merits.

Accordingly, as this Division of the Adjustment Board lacks jurisdiction under Section 3, First (h) of the Railway Labor Act, it may not reach the merits. As the governing Agreement and disputed Rule covers contract Supervisors, the provisions of the Act, supra compels us to dismiss the Claim.

Form 1
Page 3

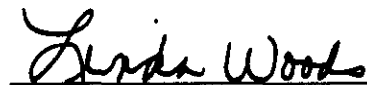
Award No. 12712
Docket No. 12568
94-2-92-2-91

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 22nd day of June 1994.