Award No. 5522
Docket No. MW-5485

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: *Claim of the System Committee of the* Brotherhood, that:

(1) The Carrier violated the effective agreement when they abolished the position of Welder Foreman E. T. Froeschle, effective *midnight, December 16, 1949 through January 2, 1950;*

(2) Welder Foreman E. T. Froeschle be paid the difference between the amount he received as Welder and what he should have received as Welder Foreman during the period referred to in part (1) *of this claim.*

EMPLOYES' STATEMENT OF FACTS: Claimant E. T. Froeschle, Greensburg, Kansas, is employed as a System Welder Foreman. He was employed in such capacity through the period December 1, to December 16, 1949, and was compensated at the applicable rate.

Effective midnight, December 16, 1949, his position and the positions of the employes in his welding crew, were abolished.

Foreman Froeschle exercised his seniority in the Welder's class because no position existed that would permit him to exercise his seniority in the Foreman's class. He received the Welder's rate of pay for services rendered during the period December 17, 1949 through January 2, 1950.

On January 3, 1950, Foreman Froeschle's welding crew was re-established at Greensburg, Kansas.

A claim was filed in behalf of Foreman Froeschle, requesting that he be paid the difference between what he received as Welder and what he should have received as Welder Foreman during the second period of December.

Claim was declined.

The agreement in effect between the two parties to this dispute, dated May 1, 1938 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

month's wages to a monthly rated foreman when his services as such were terminated within a calendar month. This shows not only that the organization has not protested or taken exception to the interpretation and application which has been given to Rule 28 over a period of many years, but also certainly demonstrates that it has been consistent with the intended application of the parties at the time the rule was included in the agreement.

The payment of a monthly rate does not establish a month as a unit of employment. The interpretation contended for by petitioner is clearly erroneous as well as distinctly contrary to the long accepted application of the rules. It is evidently designed to obtain a revision of the rule which this Board has stated is outside its jurisdiction. The position was legitimately abolished in a bona fide force reduction, and the rules of the agreement no longer applied to the welder foreman position when it ceased to exist. The agreement here controlling is not a contract of employment nor does Rule 28 fix a term of employment. Even if the monthly pay rate should be erroneously held to indicate a hiring by the month, the right of the carrier to make force reductions subject to seniority rights as provided for by the rules of the agreement shows clearly that there was no hiring for a term in the case of this Claimant while he was working as a welder foreman.

The agreement here is an agreement covering working conditions and hours of service of an employe as long as he remains in the service of this carrier and those rules relate to actual employment in named occupations. No provision of this agreement requires payment for services not rendered.

OPINION OF BOARD: In our recent Awards we have held consistently that rules such as Rule 28, relied upon by the Organization here, provide a basis of pay and not a monthly guarantee. When positions covered thereby are abolished no pay is due on that basis. That the parties contemplated that such positions would be abolished in the reduction of forces is clearly indicated by the provisions of Rule 6. Moreover it clearly appears that the parties have heretofore so interpreted this rule because such has been the practice since the inception of that type of rule in 1922.

The Employes also claim that the abolition of the gang was a violation of Rule 36. It appears that prior to December 16, 1949 there were two gangs engaged in welding and grinding rail ends, that about such time the Engineering Department became aware that they were exceeding their appropriations and not knowing then what their appropriations therefor would be in January, and this being work which could be deferred both gangs were abolished. To say that the officials of the Carrier might have foreseen the necessity for reducing expenses earlier and thus might have been able to make a proper reduction of expenses by first laying off the junior men would be pure conjecture.

Upon the evidence in this case we are unable to find that the action of the Carrier was a violation of Rule 36. Hence the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe, within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1951.