

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Preston J. Moore, Referee**

**(Supplemental)**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it assigned Mr. R. J. Ruh to perform service as a Foreman "with Shovel No. 89" and failed and refused to allow him Foreman's pay for such service.

(2) Mr. R. J. Ruh be allowed the difference between what he was paid at the Assistant Foreman's rate and what he should have been paid at the Section Foreman's rate for the service referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Under date of April 4, 1957, the Carrier issued Bulletin No. 21 advertising the position of Assistant Foreman to work with Shovel No. 89 on the Second District of its Dubuque and Illinois Division. A copy of Bulletin No. 21 is attached hereto and identified as Employees' Exhibit "A."

Under date of April 21, 1957, the Carrier issued Bulletin No. 23½ notifying all concerned that Mr. Raymond J. Ruh had been assigned to the Assistant Foreman's position advertised in Bulletin No. 21. We attach hereto and identify as Employees' Exhibit "B," a copy of Bulletin No. 23½.

In addition to Claimant Ruh and the Shovel Operator, two Flagmen-Section Laborers were also assigned to work with Shovel No. 89.

Claimant Ruh's duties consisted of supervising and directing the work of the two Flagmen-Section Laborers in affording the necessary flag protection for Shovel No. 89 when working adjacent to the tracks as well as in the performance of other work in connection with the operation of the shovel. Mr. Ruh also prepared the necessary payroll reports; was in charge of and responsible for the operation of the track motor car assigned to this unit and received instructions regarding his assignment from an official of the Carrier.

bulletin, oral direction or otherwise. Carrier states that any such work performed by claimant was not by direction of the carrier. An employe may not voluntarily perform supervisory service without authority and subsequently assert such service in support of a claim.

The record does not establish that the remaining work of the Warehouse Foreman was improperly assigned. Nor is any rule pointed out that requires the establishment of a foreman's position at this point. The evidence does not show that another lower-rated position was created to do the work of an abolished high-rated position. There is no basis for a sustaining award."

In Award 4235 of this Division your Board held:

"We adhere to the general principle that the amount of supervision to be employed in the performance of work is a matter which management alone may determine. This is so fundamental to the fixing of responsibility on management for the efficient operation of its railroad that to rule otherwise would operate to destroy the very responsibility with which management is charged."

In Award 6349 of this Division your Board held:

"It is the province of the Carrier to determine the amount of supervision, if any, that is required in the performance of work of the type here involved."

In Award 6699 of this Division your Board held:

"In Award No. 4992 we held that it was 'within the province of the Carrier to determine the amount of supervision needed to properly expedite the work. If the Foreman's position is not required and the supervisory duties of the position can be handled by other supervisory officers who are entitled to perform it, we can find no rule of the Agreement prohibiting such handling.' We have reasserted this principle in several later awards."

In Award 7066 of this Division your Board held:

"It is the prerogative of Management to determine the amount and character of the supervision required to expeditiously and efficiently handle its work."

The Carrier respectfully submits that the instant claim is not supported by the provisions of schedule rules, agreements or understandings and is contrary to interpretations thereof and practices thereunder and should therefore be denied.

All data contained herein has been made known to the Employees.

(Exhibits not reproduced)

**OPINION OF BOARD:** This is a dispute between The Brotherhood of Maintenance of Way Employees and The Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

The Carrier assigned the Claimant to Assistant Foremen's Position with Shovel No. 89. Claimant Ruh, the shovel operator, two Flagmen-Section

Laborers were assigned to work with Shovel No. 89. Claimant's duties consisted of supervising the two Flagmen-Section Laborers. He also prepared the necessary payroll reports. He was responsible for the track motor car assigned to this unit. He did not receive his instructions from an official of the Carrier.

The Petitioner contends that Claimant Ruh was assigned and performed the duties of a Foreman and therefore was entitled to the Section Foreman's rate of pay. The Carrier, on the other hand, contends that the Claimant did not perform the duties of a Foreman, but the duties of an Assistant Foreman.

Although the Claimant did prepare the payroll reports, the record indicates that this was an arrangement between him and the Foreman, and not a requirement which the Carrier made of the Claimant. Rule 46-A requires that the Foreman report to officials of the railroad.

"An employe who, in addition to his other duties, directs the work of men and reports to officials of the railroad will be designated as a foreman." (Emphasis ours).

With the record before us, there is no evidence to establish the fact that Claimant reported to officials of the railroad. Consequently, under Rule 46 (a) he is not designated as the Foreman. The Foreman B. A. Valley exercised little, if any, supervision over Shovel 89. We are of the opinion that it is the right of the management to determine the degree of supervision to be exercised. Previous awards of this Board have so held. (See Award 7066.) All of the duties performed by the Claimant are duties which could be properly required of the Assistant Foreman under the Agreement. For the foregoing reasons we find the Agreement was not violated.

**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 Employes involved in this dispute are respectively *Carrier and Employes* 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: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April, 1963.