

Award No. 12425

Docket No. MW-11457

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) The Carrier violated the effective Agreement when, on or about July 21, 1958, it abolished a number of positions of Track Foremen on Seniority Districts Nos. 1, 2, 3, 4, 5 and 6 and on or about August 1, 1958 created a varying number of Track Foremen's positions on each of said Seniority Districts, (erroneously and improperly given the title of Assistant Roadmasters) without the bulletining and assignment thereof in accordance with the provisions of the Agreement rules.

(2) Because of the violation referred to in Part (1) of this claim the employees who were selected by the Carrier to fill the aforesaid newly created positions be allowed pay for any and all time worked in accordance with the Agreement rules and that the employees who should have been selected under the provisions of this Agreement, particularly Rule 5 of Article 4, be paid at the appropriate rate for all time worked each day by a junior track foreman.

(3) Because of the violation referred to in Part (1) of this claim, the Carrier now be required to bulletin the newly created positions of Track Foreman.

EMPLOYES' STATEMENT OF FACTS: The work of maintaining and repairing the Carrier's tracks, which includes such work as the patrolling thereof, raising or surfacing track, changing defective angle bars, replacing missing track bolts and etc., is work which has been historically and traditionally assigned to and performed by the carrier's Track Department employees.

Effective July 21 and 23, 1958, a number of sections on Seniority Nos. 1, 2, 3, 4, 5 and 6 were abolished and the remaining sections lengthened. A typical example of the circulars notifying the employees of such action is Circular No. 176, which reads:

reason to believe that in the instant case the Employes and Organization plan to submit as "evidence" in this alleged claim a number of letters or statements which have never been presented to the Carrier during the handling of this matter on the property, and some of which will no doubt be dated subsequent to the date on which the Employes and Organization filed notice of intent to file this alleged dispute with the Third Division.

Such is not proper handling of claims as contemplated in the amended Railway Labor Act, and falls far short of sustaining the burden of proof which rests upon the Employes and Organization.

No proof that the Carrier violated the Agreement in this alleged claim has ever been presented.

The Employes and Organization have therefore failed to sustain the burden of proof, which is theirs. The Carrier therefore respectfully requests the Third Division to deny this alleged claim in its entirety.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier abolished 41 positions of Section Foremen on July 21 and 23, 1958. Those positions were within the Scope of the Agreement to which Petitioner and Carrier are parties. The Carrier's action in abolishing the positions is not questioned.

Effective August 4, 1958, Carrier established 12 positions of Assistant Roadmaster. The position of Assistant Roadmaster is not within the Scope of Petitioner's Agreement with Carrier.

Petitioner alleges that certain duties, reserved to Section Foremen, were assigned to and were performed by the occupants of the newly established positions of Assistant Roadmaster. The innuendo is that work formerly performed by occupants of the abolished position of Section Foremen was assigned to the Assistant Roadmasters. Affirmatively, Petitioner avers that the newly established positions of Assistant Roadmaster were de facto Section Foremen positions which could not be removed from the Scope of the Agreement by Carrier mislabeling them.

Carrier's answer to Petitioner's allegations is that the work had not been performed exclusively by Section Foremen—it, also, had been performed, usually and customarily, by other crafts and classes, including Assistant Roadmasters.

The issue, as joined, placed the burden on Petitioner to prove by a preponderance of relevant and material evidence, in the record as developed on the property, that the work had been performed, historically, traditionally, usually, customarily and exclusively, by Section Foremen. We are unable to find in the record evidence which meets the burden of proof. We will dismiss the claim for lack of proof.

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 Employees involved in this dispute are respectively Carrier and Employees 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 claim fails for lack of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.