



Award No. 14829
Docket No. MW-12999

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) The Carrier has improperly deprived Extra Gang Foreman L. N. Jennings of an allowance of \$10.00 as compensation for house rent for each calendar month beginning with October, 1960.

(2) L. N. Jennings now be paid the \$10.00 monthly allowance for house rent which he was deprived of beginning with October, 1960, and for each subsequent month thereafter until the agreement violation has been corrected.

EMPLOYES' STATEMENT OF FACTS: Effective with the close of work on Wednesday, September 30, 1959, the Carrier "abolished" the position of Yard Section Foreman at Shreveport and immediately re-established the position, but with the title of "Extra Gang Foreman," with the same rate of pay, the same working hours, the same headquarters and the same crew that were assigned to the "Yard Section Foreman."

Mr. W. F. Warren, who was the incumbent of the position of "Yard Section Foreman" at Shreveport, continued in the same capacity but with the title of "Extra Gang Foreman" beginning with October 1, 1959.

Under a special agreement, the incumbent of the Yard Foreman's position at Shreveport was granted "an allowance of \$10.00 per calendar month as compensation for house rent." Because of the change of title in the position held by Mr. Warren, the aforesaid monthly allowance was discontinued and a claim for payment of said allowance was presented and handled up to and including the Carrier's highest appellate officer who declined the claim in a letter dated December 2, 1959. The undersigned General Chairman then requested conference to discuss that case, but conference was not granted or held until November 16, 1960, at which time the time limits within which to institute proceedings to the Board had already expired.

Because the delay in holding conference was the Carrier's sole fault, the undersigned General Chairman called the Manager of Personnel's office on September 27, 1960, advising them that this case was just a few days over

Supplemental Agreement effective September 1, 1949, relating to the 40-hour week, copies of which are on file with the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 30, 1959, Carrier abolished the position of Yard Section Foreman at Shreveport, Louisiana. On October 1, 1959, it established the position of Extra Gang Foreman. The Yard Section Foreman received a \$10.00 allowance under a special agreement for house rent in addition to his basic rate of pay of \$380.52 per month. The rate of pay for the new position of Extra Gang Foreman was \$379.88 and the occupant did not receive the \$10.00 allowance. W. F. Warren, the incumbent of the Yard Section Foreman position before it was abolished, was assigned to the newly created position of Extra Gang Foreman.

His successor, L. N. Jennings, makes claim that Carrier improperly deprived him of the allowance of \$10.00 as compensation for house rent for each calendar month beginning October, 1960. He argues that the title of the position was changed from Yard Section Foreman to Extra Gang Foreman, but that basically the position remained the same "with the same rate of pay, the same working hours, the same headquarters and the same crews that were assigned to the Yard Section Foreman." He, therefore, concludes that Carrier's termination of the housing allowance provided the Yard Foreman was a unilateral act in violation of the July 11, 1938 Agreement.

Carrier takes the position that the claim is a refile of a claim made by Mr. Warren, the first occupant of the position of Extra Gang Foreman which was not appealed within the time limit requirements set forth in Article V of the August 21, 1954 Agreement. Therefore, it argues that the present claim also be barred.

On the merits, Carrier points out that the special agreement granting the Section Foreman a housing allowance has no application to the Extra Gang Foreman. The positions are not the same, for the Extra Gang Foreman's responsibilities, duties, and territory are different from those of the Section Foreman.

The record discloses that W. F. Warren made claim for the housing allowance on November 16, 1959. This claim was denied by Carrier on December 1, 1959, and no appeal was made within the nine-month period prescribed by the time limit provisions of Article V, Section 1(c) of the National Agreement of August 24, 1954 by Mr. Warren or by Mr. Jennings who succeeded him on April 20, 1960.

The instant claim filed on November 30, 1960 is for the same alleged violation as that in Mr. Warren's claim. Since the initial claim should have been appealed by September 2, 1960 to comply with the time limit provisions, it is barred and the re-filing of the claim by Mr. Jennings on November 30, 1960 is also barred for the same reason.

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 Claim shall be dismissed.

AWARD

The claim is dismissed in accordance with the above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of October 1966.