

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Arthur W. Devine, Referee

## PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) - (a) The Carrier violated the Agreement when it failed to bulletin and fill the vacancy in the position of Foreman — Motor Car Repair Shop at Champaign, Illinois caused by the retirement of the incumbent thereof.

(b) The Carrier further violated the Agreement when it thereafter assigned all duties and responsibilities of said position to an employe excepted from the scope of the agreement. (System Case 582/ Ill-43-R68).

(2) Equipment Repairman W. Ferry be allowed the difference between what he should have received at the foreman's rate and what he received at the equipment repairman's rate beginning sixty (60) days retroactive to September 19, 1968, the date of claim presentation, and continuing until the foreman's position has been bulletined and assigned in accordance with Rule 21 (a).

**EMPLOYEES' STATEMENT OF FACTS:** The position of Foreman — Motor Car Repair Shop at Champaign, Illinois was established, bulletined and subsequently assigned to the successful applicant (O. E. Wilson) on March 16, 1966. On June 14, 1968, Mr. O. E. Wilson retired, thereby creating a vacancy which the Carrier was obligated to bulletin and to assign in compliance with Rule 21(a) which reads:

"Bulletin notice covering new positions or vacancies will be posted for a period of 10 days at the headquarters of the gangs in the sub-department of the employes entitled to consideration in filling the positions, during which time employes may file their applications with the official whose name appears on the bulletin. Such bulletin will show headquarters' point, title of position, temporary or permanent, rate of pay, hours of service, gang number, and rest days of position bulletined. Appointments will be made not less than 10 days or more than 20 days from date of bulletin. Name of successful applicant will be posted. Copy of bulletin and award will be furnished Local Chairman."

no question of rebulletining the foreman's position as the position was merely established as an inducement for Mr. Wilson to stay. This fact is further supported by the historical absence of a foreman's position in this shop.

Since General Foreman Schwabe had completed his instruction project some time ago and was presently in the shop (along with Roadway Equipment Supervisor H. M. Perry), the division engineer decided the foreman's position would be superfluous.

The Champaign Motor Car Shop is now being supervised in the same manner in which it had been since its inception in 1924 (with the exception of the period from 1966 to 1968).

The correspondence is attached and labeled Exhibit A through K.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Petitioner alleges that the Carrier violated the Agreement when it did not bulletin the position of Foreman — Motor Car Repair Shop at Champaign, Illinois, when the occupant of that position retired on June 14, 1968, but assigned all duties and responsibilities of the position to a General Foreman, whose position is excepted from the Agreement.

The Carrier contends that it has maintained a motor car repair shop at Champaign, Illinois, since 1924; that throughout the years the supervision of said facility has been vested in a non-union management position; that the foreman position was in existence only for a period of slightly more than two years; that the facility is now being supervised in the same manner in which it has been since its inception in 1924, with the exception of the period from 1966 to 1968 when the foreman position was in existence; that the Carrier has the sole right to determine the amount of supervision necessary at any of its facilities; and that in the handling on the property the Petitioner did not prove a violation of the Agreement.

It is well settled that, unless otherwise specifically provided in the Agreement, Carrier has the sole and exclusive right to determine when and under what circumstances a foreman is assigned to supervise a group of employees. See Award 11441 and others cited therein.

The Scope Rule of the applicable Agreement is general in nature and under innumerable decisions handed down by the Board, the Petitioner has the burden of proving that the work complained of is of a kind that has been historically, customarily and exclusively performed by employees covered by the Agreement. See Award 13656 involving the same parties. Applying this principle to the facts in the present case, we find that the Petitioner has not met the burden of proving a violation of the Scope Rule. Since the Scope Rule is the primary rule invoked in the case, we need not direct our attention to the other rules cited by the Petitioner since they do not become operative until a violation of the Scope Rule is found. (Award 17944.) We will deny the claim because of lack of proof by the Petitioner.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;