

Award No. 18329
Docket No. MW-18644

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned track supervisors and roadmasters to bulletined positions (5) of foremen of maintenance gangs. (System Files 8-B-120/L-126-1231, 6-B-113/L-126-1247, 8-B-121/L-126-1253, 10-B-126/L-126-1250 and 1-B-122/L-126-1249).

(2) The assignment bulletins be rescinded and new bulletins be issued assigning the senior scope-covered applicants to the positions referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: As a result of the Carrier's decision to effectuate a change in work methods, it abolished numerous section gangs and established a number of mobile maintenance gangs on April 24, 1967. Some of the positions of section foreman which were eliminated thereby had been held by certain carrier officers prior to their promotions.

Employees who are promoted to official positions retain their full rights on the seniority district from which promoted and are entitled to return thereto under the clearly expressed terms set forth within Rule 14 which reads:

"Employees promoted to or now holding positions above the rank of foreman, will retain their full rights on the seniority district from which promoted.

INTERPRETATION: When returning to service, covered by this agreement, after having filled a position as indicated in rule, the employee should return to position formerly held and from which he was promoted unless, in the meantime, it has been bid in and filled by an employee with greater seniority in that class, in which case the employee who has filled an official position will bump the junior man in that class. If he returns to his former position, then the party displaced must bump the junior man in that class. (See Memo No. 16)."

Cope and D. W. Bozarth. You nor any elected union official of that stature, have taken any exception or raised the voice of protest when such assignments were made in behalf of the Organization officials. This fact and this fact alone, stands in the open for all to see as clear evidence that if it is proper and in line with our understandings and agreement, to assign union officials in this manner, then it follows that it is equally proper for carrier officials to be assigned.

I told you during conference I would secure signed statements from carrier representatives who were in attendance at the meeting in Silvis who witnessed the making of the subject understanding. When such statements are received, I will forward copies to you for your file.

I have attached additional copies of the correspondence referred to in my letter of February 7, 1969, which sets forth all major understandings and agreements reached during the reorganization process. In addition I have also enclosed the assignment Bulletin No. 10, dated May 28, 1968, which assigns the position of Maintenance Gang Foreman at Pratt, Kansas to Mr. J. W. Cope, Vice President of the BMWE.

At the conclusion of our discussion, you were advised the decision already rendered was reaffirmed.

Yours truly,

/s/ G. E. Mallery"

The signed statements referred to by the Carrier and attesting to the oral understanding in question are attached, marked Carrier's Exhibits D and D-1.

In each of the disputes, identified in the State of Claim (supra), the Petitioner rejected the Carrier's decision and progressed the dispute to the Third Division of the National Railroad Adjustment Board for adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier and the Organization were faced with the problem of retained seniority rights for a number of employees who had been promoted within the ranks of the Carrier beyond the position of Foreman and for others who had been elected to official positions within the Organization.

Carrier's method of track maintenance had undergone a complete change.

It is the strong position of the Carrier that to determine the positions to which these Union and Carrier officials would return, when and if they did return to permanent positions, the parties had an oral agreement. They contend throughout the record that the problem was discussed at a number of conferences, that conclusions were reached and that the parties acted in accordance with that procedure.

There is no contention on the part of the Carrier that there was a written Agreement. The Organization denies that the conversations were ever more than discussions. They contend that the formal procedure was never determined.

There is evidence to support the Carrier position, both in letters between the Carrier and Organization officers and cited action concerning employees.

We are not dealing, as Carrier points out, with the return to permanent positions. Instead, we are concerned—following the complete rearrangement—with a situation whereby Carrier and Union officials could equitably reestablish identifiable positions to which they could subsequently return.

Toward this end, we are convinced, an oral agreement existed whereby both Union and Carrier officials bid one time only on newly created positions and thus maintain their standing under the rules of the Agreement.

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;

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 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 11th day of December 1970.