

NATIONALRAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20284
Docket Number NW-20311

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(**Delaware and Hudson Railway Company**)

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

(1) The Carrier violated the **Agreement** when, at the close of work on Friday, October 29, 1971, it abolished a position of Mason Foreman and transferred the work **formerly** performed by a Mason Foreman to a Carpenter Foreman. (System File 2-11 Case No. 1.72 MW)

(2) The position of Mason **Foreman** now be advertised and awarded in accordance with the provisions of **rules contained in Agreement** effective **November 15, 1943**, as presently revised.

(3) Mason Dominick N. **Mamone** be **allowed** the difference in pay between what he did receive at the Mason's rate and what he should have received at the Mason **Foreman's** rate from November 1, 1971, until such **time** as the violation is corrected.

OPINION OF BOARD: Prior to October 29, 1971, Carrier employed two B&B gangs, B-10 and B-12 at **Colonie**, New York. Gang B-10, supervised by a Carpenter For-, consisted of two carpenters, a carpenter helper and a painter; Gang B-12, supervised by Claimant as a Mason For-, consisted of two carpenters, two carpenter helpers and a **mason**. As of November 1, 1971 Carrier combined the two gangs into one gang, Gang B-10, consisting of four carpenters, two carpenter helpers, two masons and **one** painter all **under** the supervision of the Carpenter Foreman. As a result of this consolidation Claimant was forced to exercise his seniority **in** a lower class, as a mason.

Petitioner alleges that Carrier violated the Agreement **when** it abolished the **position** of mason for- and transferred the work **formerly** performed by that mason **foreman** to a carpenter for-. The Organization argues that composite gangs, such as B&B Gang B-10, **may** not be established by Carrier without negotiation and agreement between the parties. In support of this position Petitioner cites Rules 3(a) and 36(a) **claiming** that those rules "...prevent the creation of composite gangs and prevents the assignment of work without regard to class designation." Rule 3(a) and the pertinent portions of Rule 36(a) are as follows:

"Rule 3(a) Seniority rights of **employees**, except **trackmen** and Laborers, **are** confined to the sub-department and class **in** which employed and to the division on which they are located."

"**Rates** of Pay - Rule 36(a) The following rates of pay are hereby incorporated in and made a part of this agreement:

Occupation	Rate
CarpenterForemen.....	\$214.73
PainterForemen.....	\$214.73
<u>Mason Foremen.....</u>	<u>\$214.73"</u>

Carrier asserts in denying the arguments of Petitioner, that there is no prohibition in the rules for the establishment of *composite* gangs and points **to** many examples of **their existence** over the years (including B&B **Gang** B-12). Further Carrier argues that this issue has been disposed of in Award 14457 involving the same parties and Agreement. We note that in that Award we said that the Carrier reserves the right to assign foremen as it deems necessary.

Petitioner's position in this dispute fails in two critical areas. There is no evidence in the record that Claimant actually performed work entitling him to the Mason **Foreman** rate; further there is no evidence whatever that the Carpenter Foreman performed any work which is normally within the purview of a Mason For-. Given these flaws and the fact that there is no apparent rule support for Petitioner's **position**, the **claim** must be denied.

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 ere 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this **14th** day of June 1974.