

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20726  
Docket Number MW-20712

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(The Akron, Canton and Youngstown Railroad Company

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

(1) The Agreement was violated when the three positions of Track Patrol Foreman with headquarters respectively at Bluffton, New Washington and Medina were abolished effective 4:00 P.M., Friday, December 15, 1972.

(2) The Agreement was further violated when the duties and work of the aforesaid positions was thereafter assigned to and performed by other than Track Patrol Foremen.

(3) Messrs. C. C. Druckemiller, George Shepherd and N. S. Berentz each be reimbursed for the monetary loss suffered from the date of abolishment of their positions of Track Patrol Foreman until the date they are returned to positions of Track Patrol Foreman,

OPINION OF BOARD: Petitioner contends that the Agreement was violated by Carrier unilaterally abolishing three positions of Track Patrol Foreman on December 15, 1972; it is alleged that the Agreement was further violated when the duties of the Track Patrol Foremen were thereafter assigned to an Assistant Roadmaster, a non-contract employee. It is also claimed that the Agreement was abrogated in violation of the Railway Labor Act: by the abolition of the positions.

The history of the positions in question is not germane to the dispute except that Carrier decided it did not wish to continue the three positions which had been established by an Agreement dated April 22, 1969. Carrier admits that it appointed an Assistant Roadmaster, coincident with the abolition of the jobs herein, for the purpose of compliance with F.R.A. rules requiring certain track inspections, reports etc. By agreement with the Organization, dated May 1, 1973, the position of Track Inspector was established to perform all the required track inspections and reports and the Assistant Roadmaster position was abolished. Carrier insists that no work performed by the Track Patrol Foremen was required of the Assistant Roadmaster (or the Track Inspector subsequently) and all such work was returned to the section gangs.

Petitioner states that Carrier cancelled or abrogated the Agreement of April 22, 1969 by abolishing the positions and redistributing the work it had agreed to have performed by the Track Patrol Foreman; it is asserted that such action could only take place after negotiation and mutual

agreement. It must be noted, however, that there is nothing in the record of this case to indicate that the Agreement was cancelled or abrogated **in** the first instance. The record shows only that the three positions were abolished as indicated above. If the Organization's position on this issue were sustained, it would mean that Carrier could never abolish a job without cancelling the Agreement: obviously this would be unsound and **contrary** to the terms of the Agreement. **Rule 5 (c)** specifically provides for reductions in force, and the abolishment of the three jobs herein was accomplished in conformity **to** the provisions of that rule.

Petitioner argues that the work in question cannot be **removed** from the scope of the Agreement without negotiation and cites a series of Awards in support of this proposition. The thrust of these citations is well expressed in Award 10871:

"It Cannot be disputed that the **primary** purpose of a **collective** bargaining **agreement** is to preserve to the **Organization** and its **members** the positions and work of the particular craft **involved** and this Board is **committed** to the **principle** that **the** work of positions covered by an **Agreement** belongs to **employees** subject to that Agreement and may not properly be performed by employees of another **craft**."

We certainly find no fault in that reasoning (see also Awards 1296, 3606, 23358 and many others). However, on numerous occasions the Board has also held that management has the **inherent right**, **in** the absence of legal or contractual prohibitions, to abolish or rearrange the work of positions (Awards 13933, 14738, 9806, 14493, **20355**, et al): there are no Agreement restrictions in this dispute. We then must come to the argument of the Organization **that** the work in question was assigned to the Assistant goadmaster, who was not covered by the **Agreement**. In spite of the repeated assertion by the Organization, what **is plainly** needed to establish the validity of the contention, is **evidence**; however, the record is barren of any **proof** to **substantiate** the allegation **in the face** of Carrier's denials. We must **conclude therefore**, that the jobs were abolished in conformity with the **Agreement** and that the work was **returned to the** section gangs since **no evidence** to the contrary was presented, **for this** reason 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;

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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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of **May** 1975.