

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26353
Docket Number MW-26380

Edward L. Suntrup, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(Chicago and Western Indiana Railroad Company

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

(1) The Carrier violated the Agreement when it abolished all of the **B&B** Carpenter's positions on December 30, 1983 and, thereafter assigned and used **B&B** Carpenter Foreman **F. Farnesi** and Plumber Mechanic **J. Tatinger** to perform carpenter's work (System File **CWI-BB-1-84/413-MofW**).

(2) Because of the aforesaid violation, furloughed Carpenters **F. Gaydich**, **J. Moskal** and **M. Booth** shall each be allowed an equal proportionate share of the man-hours expended by **B&B** Carpenter-Foreman **F. Farnesi** and Plumber Mechanic **J. Tatinger** in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: On February 28, 1984, the General Chairman of the Organization filed a Claim stating that the Carrier had been in violation of various Agreement Rules when it abolished three Carpenter positions on December 30, 1983, despite the fact that "...the work assigned to those positions continues to exist and is being performed by Carpenter Foreman **R. Farnesi** and Plumber Mechanic **J. Tatinger**." The Claim requested that:

"because of the above-referred to violation Claimants **F. Gaydich**, **J. Moskal** and **M. Booth** now be allowed pay equivalent to what they would have been paid had they been properly retained in service to perform the character of work usually, customarily and historically assigned to **employees** in their classification of Carpenter, in preference to Carpenter Foreman **R. Farnesi** and Plumber Mechanic **J. Tatinger**."

As a preliminary point the record shows that Claimant **J. Moskal** retired from **service** under the Railroad Retirement Act prior to the filing of this Claim. The Claim shall be limited, therefore, to the other two Claimants named in the Statement of Claim. Mr. Moskal was not in a position to have suffered any loss from any alleged Agreement violation when the Claim was filed.

The Carrier's January 3, 1985, Seniority Roster shows that the two Claimants held seniority in the classification of Carpenter as of the following dates; **F. Gaydich** (9-14-53); **M. Booth** (5-4-82). **R. Farnesi** held Carpenter Leader seniority from August 17, 1981, and Carpenter Foreman seniority from January 1, 1983. In Fts denial of the Claim the Carrier stated that

after it abolished the Carpenter positions because of a loss in business it continued to need a Carpenter Foreman and that position was retained "...**(s)**ince the incumbent of this position has always **participated...**(in the Carrier's carpentry work)... and [was] not confined to supervisory duties only." While it is true that Mr. Farnesi never held seniority in the Carpenter classification per se the Board can find no Agreement support in the Rules at bar which would have required the Carrier to have abolished the Carpenter Foreman position rather than the Carpenter positions since the incumbents of both one and the other performed carpentry work, albeit the Foreman co-mingled his Foreman's duties with those of a Carpenter. Such is not uncommon on a Carrier of this size. That part of the Claim with respect to Mr. Farnesi cannot be sustained.

Mr. Tatinger, on the other hand, had established Carpenter seniority on August 25, 1947, Painter Foreman seniority on April 1, 1968, and Plumber Mechanic seniority on March 10, 1980. On March 9, 1984, the Carrier informed the Organization that it had abolished the Plumber Mechanic position and was in the process of reestablishing a Carpenter position. The Carrier issued a Bulletin (Notice No. 2) on March 12, 1984, by which it advertised a permanent Carpenter position. Because he was the most senior person holding Carpenter seniority, Mr. Tatinger was assigned to this position.

It appears to the Board that the Carrier was in violation of the Scope Rule of the Agreement from December 30, 1983, until it abolished the position of Plumber Mechanic in March of 1984 by permitting the Plumber Mechanic to do carpentry work during that period. The Carrier apparently recognized its error by abolishing the Plumber Mechanic position, establishing a new Carpenter position, and by assigning the Claimant to the latter effective March 26, 1984. The Carrier claims that after this it was able to apply Rule 38 of the Agreement which permitted Mr. Tatinger to do the higher rated Plumber Mechanic's work at a higher rate when such work was available.

It is the Board's opinion, after studying the **various** provisions of the Agreement, that this was the proper application of the contract. The Carrier should have followed this procedure immediately in January of 1984 rather than wait until the middle of March of that year. The Carrier shall, therefore, pay Claimants Gaydich and Booth "...**an** equal proportionate share" of the man-hours worked by Mr. Tatinger, when he worked as a Carpenter during the months of January, February and March of 1984 until the new Carpenter position was filled by the Carrier in March of 1984. The General Chairman on this property shall consult with the appropriate Carrier officer in order to reasonably ascertain, from the Carrier's records, what the proper sum is which is to be divided between the two Claimants. It is not clear to the Board if that sum can be exactly determined, from the record of this case, since Mr. Tatinger evidently also worked as a Plumber Mechanic during the time-frame in question. If there is disagreement **over** the exact sum to be divided by the Claimants, it is the Board's ruling that it shall be 60% of the hours actually worked by Mr. Tatinger from December 30, 1983, until he assumed the bulletined Carpenter's position effective March 26, 1984.

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

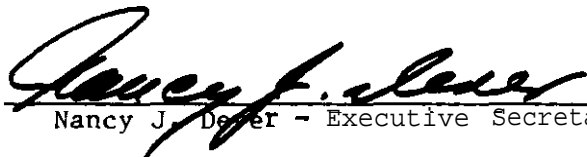
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.