

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31349
Docket No. MW-30966
96-3-92-3-891

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Springfield Terminal Railway Company

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

- (1) The Agreement was violated when the Carrier abolished one (1) foreman position on Crew 3941, furloughed Foreman T.G. Smith and retained in service a junior foreman assigned to said crew on April 18 and 19, 1991.
- (2) As a consequence of the violation referred to in Part (1) above, Foreman T.G. Smith shall be compensated for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the outset, both parties have raised objections to new argument offered by the other in its submission to the Board. No evidence or argument thus presented will be considered by the Board in its deliberations.

The instant case arose when Carrier abolished Claimant's position on Dover Maintenance Gang 3941 on April 17, 1991, and retained a junior Track Foreman. In response to the Organization's claim, the Carrier maintained that Claimant had been disqualified as an FRA track inspector and repairman, that it was required by law to retain a certain number of FRA qualified inspectors, and that the junior employee was so qualified. In response to the Carrier's statement, the Organization denies that Claimant was ever disqualified as an FRA inspector. It notes that there is no explanation for the fact that Claimant's name is crossed out on Carrier's list of FRA-qualified track inspectors.

There is no evidence on the record in this case to contradict Carrier's assertion that Claimant had, at some time, been disqualified as an FRA track inspector. Absent bare assertions on the part of Claimant and the Organization, there is no indication that Carrier's assessment was incorrect. In the absence of probative evidence to the contrary, the Organization has failed to meet its burden of persuasion in this matter. Accordingly, the Board has no basis upon which to sustain the instant claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.