

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31451  
Docket No. MW-30880  
96-3-92-3-725

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Agreement when it assigned Assistant Track Inspector F. W. Fittinger to relieve Surfacing Gang Foreman J. T. Farr on Surfacing Gang #331 from August 5 through 10, 1991 (System File MW-91-63-CB/503-60-A).

(2) As a consequence of the aforesaid violation, Assistant Foreman W. Iverson, Jr. shall be allowed forty (40) hours of pay at the specialized foreman's straight time rate and any overtime worked at the specialized foreman's time and one-half rate, that was performed during the period in question."

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.

The Organization filed the instant claim on behalf of the Claimant when the Carrier assigned an Assistant Track Inspector to relieve a vacationing gang Foreman for the period August 5 through August 10, 1991. The Organization argues that "such work is regularly assigned, performed and reserved to employees assigned in the Roadway Track Department." Furthermore, it contends that the Claimant was available, qualified, and held seniority as an Assistant Foreman within the Roadway Track Department.

The Carrier denied the claim contending that the Claimant is "the incumbent of an Assistant Foreman position and does not hold seniority as a Foreman." Furthermore, the Carrier argues that the Claimant was fully employed on the dates in question and that both the Claimant and the Assistant Track Inspector hold seniority in the Roadway Track Department.

This Board reviewed the record and we find that the Organization has not met its burden of proof that the Carrier violated the Agreement when it assigned an Assistant Track Inspector to relieve the Surfacing Gang Foreman for the period August 5 through August 10, 1991. It is fundamental that the Organization bears the burden of proving by a preponderance of the evidence that the parties have agreed to some restriction of the Carrier's right to manage its operations. In this case, the Organization has not pointed to any section of the Agreement which requires the Carrier to appoint an Assistant Foreman to relieve the Surfacing Gang Foreman rather than an Assistant Track Inspector or another employee.

The Claimant in this case did not hold seniority as a Foreman. In addition, the Claimant was fully employed during the relevant time period and was working as an Assistant Foreman.

Since the Organization has not identified any section of the Agreement that prohibits the Carrier from using the Assistant Track Inspector to act as a Foreman, the Organization has not met its burden of proof and the claim must be denied.

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 April 1996.