

Award No. 3063

Docket No. MW-3016

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(1) That the management violated the provisions of Rules 12 and 13 of the Agreement between the Kansas City Terminal Railway Company and the Brotherhood of Maintenance of Way Employees, dated November 1, 1938, by failing to bulletin position of B&B foreman which became vacant May 1, 1944;

(2) That the vacancy in the position of B&B foreman shall be immediately bulletined;

(3) That the senior bidder in the B&B sub-department qualified for the position of B&B foreman shall be assigned thereto and be paid the difference between what he has received in his present position and that which he would have received as B&B foreman retroactive to May 1, 1944.

EMPLOYEES STATEMENT OF FACTS: On May 1, 1944, George W. Harper who had for many years served in the capacity of bridge and building foreman, retired from the service. Instead of, in conformity with the schedule rules, advertising the vacancy of bridge and building foreman to employees in the bridge and building department by appropriate bulletin, the Carrier hired an outsider who had no seniority rights whatsoever in the bridge and building department and assigned him as bridge and building foreman filling the vacancy caused by George W. Harper's retirement.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rules 1, 3, 12 and 13 of agreement between the Carrier and the Brotherhood of Maintenance of Way Employees read:

"SCOPE

Rule 1.

These rules shall govern the hours of service and working conditions of the Maintenance of Way Employees in the following Departments, Groups and Classes:

Track Department

Group 1:

Class 1—Track Foremen.

2—Extra Gang Track Foremen.

The General Chairman admits that there are Assistant Foremen listed on the seniority roster, although he has not shown where they are provided for in the Scope Rule of the Agreement, Group 5, quoted in Carrier's Statement of Facts. The title "Gang Foremen," which appears as Class 1, Group 5 of Rule 1 of the Agreement, clearly shows that the persons referred to are the foremen of the gangs of Carpenters and Carpenter Helpers, which are Classes 2 and 3, respectively in the same Group. The General Chairman cannot deny that the Assistant Foremen referred to in his letter are the supervisors of the B&B Carpenter gangs, or the Gang Foreman.

As to the General Chairman's statement that it has always been recognized that the "B&B Foreman's" position came under the provision of the contract of November 1, 1938, at the discussions at the time of the negotiation of the contract, it was specifically understood that Mr. G. W. Harper, B&B General Foreman, would not be covered by the Agreement. That is why there is neither a "B&B Foreman" listed in the Scope Rule, as the employees designated the position, nor a "B&B General Foreman" position, the proper designation of the position in dispute. The carrying of Harper on the seniority list was actually nothing more than a gesture, because in the event of the abolition of his position he could not have displaced either a Gang Foreman or a Carpenter, for the reason that he had never worked on these positions and had not established any seniority thereon.

The Carrier's position is further set out in a letter from the Superintendent to the General Chairman dated July 14, 1944, which is made a part of this submission as Exhibit "B."

OPINION OF BOARD: This claim is based upon the failure of Carrier to bulletin the position of B&B Foreman which became vacant on May 1, 1944. Carrier contends that it rightfully did not bulletin the position because it is not within the scope of the Agreement.

The pertinent part of the Scope Rule is as follows:

"SCOPE
Rule 1.

* * * * *

"Group 5:

- Class 1—Gang Foremen.
- 2—Carpenters.
- 3—Carpenter Helpers."

In support of its position Organization relies upon the fact that in the seniority list of employees for the years 1941, 1942 and 1943 the occupant of the disputed position, George W. Harper, was listed as a Foreman and that such position falls within Class 1 of the Scope Rule describing the class as Gang Foremen. Carrier asserts that the designation on the seniority list was a mistake and in 1944 it was corrected and this position eliminated therefrom.

The question is: Is the position designated by Organization as B&B Foreman and by Carrier as B&B General Foreman, and formerly occupied by Harper, within the scope of the Agreement and the same position described in Group 5, Class 1, as Gang Foremen?

It is to be observed that in the seniority list, positions occupied by Burke and Bolton in 1941 and 1942 and by Burke, Bolton and Nixon in 1943 are designated as Assistant Foreman. There is no such class as Assistant Foreman in the Scope Rule of the Agreement. It seems reasonably clear that these positions designated as Assistant Foreman on the seniority list are the same positions described as Gang Foremen in the Scope Rule. The positions were so classified (Gang Foremen) on the payroll during the period in question and were so considered by the men themselves. Statements appear in the record signed by H. T. Ferguson, A. J. Charlier and M. Burke, in which they state that they worked in separate gangs; have always been considered as Gang Foremen,

and that they reported to the B&B Foremen. It is significant that the name of one of these men, Mr. Burke, appears on the seniority list (Martin Burke) as Assistant Foreman.

We believe this is persuasive that the Assistant Foreman's positions mentioned on the seniority list are the positions designated as Gang Foremen in the Scope Rule and that the disputed position previously held by Harper is not within the Agreement.

It is unfortunate that the seniority list was so loosely and incorrectly prepared in apparent contradiction of the provisions of the Scope Rule. Organization calls attention to Rule 10 which provides for the revision of rosters in June of each year and that seniority dates shall be considered permanently established if not protested within 60 days from the date of posting. While we do not condone the method of publishing seniority lists as appears in this record, we do not believe that because of Rule 10 an incorrect seniority list governs over specific provisions in the Scope Rule such as are here involved.

What title the position may have been given in the seniority list is not the important consideration. If the duties of the position held by Harper were such that the position cannot reasonably be included in the designation "Gang Foremen" in the Scope Rule, then regardless of what the position may have been called in the seniority list, it is not within the Agreement and can only be included therein by negotiation.

What we said in Award 2839, in sustaining a claim for employees, is pertinent here.

"It is protection to both carrier and organization that the printed agreement * * * can be changed or modified only by further negotiation and if any changes are agreed upon, that such agreement be reduced to writing and the modified agreement executed by both parties."

We conclude that the Carrier properly did not bulletin the position in question because it was outside the scope of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 21st day of December, 1945.