

Award No. 4746

Docket No. MW-4758

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

(1) That the Carrier violated the Agreement when they assigned C. B. Dean and J. S. Gardner to perform the duties of a Leadman during the period October 19, 1946 to December 14, 1946, and denied G. G. Loertscher the right to perform such service;

(2) That G. G. Loertscher be paid the difference between what he did receive at the B & B Carpenter's rate of pay, and what he should have received at the Leadman's rate of pay during the period referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: G. G. Loertscher was, at the time this instant claim arose, a member of B & B Carpenter crew under the supervision of Foreman Cook at Helper, Utah. Under date of October 19, 1946, Foreman Cook designated B & B Carpenter, C. B. Dean, to work as Leadman under the direction of Foreman Cook. Mr. C. B. Dean has a seniority date as Carpenter as of July 1, 1937, while Mr. G. G. Loertscher has a seniority date as B & B Carpenter as of April 28, 1937.

The position of Leadman carries with it a rate of 5c per hour differential over and above the rate paid to B & B Carpenter. Mr. Dean remained on this position as Leadman until December 14, 1946. The Employees contended that since Mr. G. G. Loertscher was senior as B & B Carpenter to Mr. C. B. Dean, that Mr. Loertscher should have been given the opportunity to be employed at this higher rate of pay. The Carrier has denied our claim. (AGREEMENT FEB. 1, 1941)

POSITION OF EMPLOYES: Rule 2-b, and 9-a of the effective agreement states as follows:

"(2-b) Employees shall be entitled to consideration for positions and promotions according to their relative seniority, as provided in Rule 9."

"(9-a) Promotion shall be based on ability qualifications, and capacity for greater responsibility and where these requirements are sufficient, seniority shall prevail; the management to make the selection."

As we have previously stated in our Statement of Facts, B&B Carpenter G. G. Loertscher was senior to B&B Carpenter C. B. Dean on April 19, 1946.

Necessity for use of Leadmen is infrequent, and, while in this particular instance a Leadman was used for nearly a two-month period, that is unusual. Ordinarily a Leadman is only required for short periods of 3, 4, or 5 days, when, for some reason, it becomes necessary for a Foreman to split his gang.

At Helper, Utah, the Carrier owns and maintains some 70 or more company houses. In the instant case a gang consisting of, on the average, a Foreman and 12 men (1 Leadman, 3 Carpenters, 4 Helpers and 4 Painters) were engaged in a large improvement and repair job on the company houses, and inasmuch as the job required carpenter work and painting and paper hanging, the Foreman under the provisions of Rule 30 (b) assigned Mr. C. B. Dean as a Leadman in charge of the painters and paper hangers. The rule provides that mechanics may be assigned, but it is not compulsory that they be assigned. In actual practice where it is deemed necessary to make use of a Leadman, the selection of the Leadman is left to the judgment and discretion of the Foreman.

In the instant dispute Mr. C. B. Dean, a demoted foreman, was selected by the Foreman to act as a Leadman. In addition to being a carpenter, Mr. Dean was also an experienced painter and paper-hanger, whereas, except possibly for some unimportant and minor jobs, all of Mr. Loertscher's experience has been as a carpenter. Under these circumstances the Foreman's designation of Mr. Dean to act as Leadman was a logical and common sense choice. Certainly the appointment of a carpenter, without painting and paper hanging experience, to supervise a gang of painters and paper hangers would not be good judgment, just as it would not be good judgment to select a painter to direct a gang of carpenters. Further, Mr. Loertscher, even though he has a date of April 28, 1937, as a carpenter has never been promoted, and, therefore, during his service with this Carrier has had no experience directing and handling men. Because of his lack of experience, it is very unlikely that a foreman would select Mr. Loertscher to act as a Leadman even over a gang of carpenters.

When this case was first submitted locally at Salt Lake City, Utah, in January, 1947, the Local Chairman of the Brotherhood was advised that Mr. Dean was selected because of his experience in painting and paper hanging and that Mr. Loertscher was not selected due to his lack of these qualifications. The Organization has never questioned the Carrier's statement concerning Mr. Loertscher's qualifications, but contends the position should have been bulletined and Mr. Loertscher given an opportunity to qualify. Inasmuch as use of a mechanic as a Leadman does not constitute a promotion in the sense that a seniority date is established in a higher classification, there is no requirement that such positions be bulletined, and in the thirty years that this Carrier has had an agreement with the Brotherhood of Maintenance of Way Employees, such positions have not been bulletined.

While not conceding the position of Leadman should have been bulletined, if it had been bulletined Mr. Loertscher would not have been assigned because of his lack of qualifications for the position.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant is a Bridge and Building Department carpenter with a seniority date of April 28, 1937. C. B. Dean and J. S. Gardner are also B&B carpenters with seniority dates of July 1, 1937 and July 6, 1941, respectively. Dean and Gardner hold seniority as foremen but were working as B&B carpenters due to a reduction of force. From October 19, 1946 to December 14, 1946, excepting the period from October 21st to 26th when Gardner acted in his stead, Dean served as leadman in B&B Gang No. 4 at Helper, Utah. Claimant contends that he should have been designated as leadman during this period and claims compensation for the period at the leadman's rate.

A leadman holds no seniority as such, it not being a seniority rank under the Agreement. Under the Agreement, mechanics may be assigned as leadman and will be paid an additional five cents per hours. Rule 30-b, current

Agreement. The three B&B carpenters here involved are mechanics within the meaning of the rule.

The Organization relies upon Rules 2-b and 9-a, current Agreement, which provide:

"(2-b) Employees shall be entitled to consideration for positions and promotions according to their relative seniority, as provided in Rule 9."

"(9-a) Promotion shall be based on ability, qualifications and capacity for greater responsibility and where these requirements are sufficient, seniority shall prevail; the management to make the selection."

The fact that a leadman attains no seniority as such we do not deem important. Such a position is higher rated than that of B&B carpenter because of the greater responsibilities that it carries. It is in fact a promotion although the occupant attains no right to hold it by seniority as a leadman. There is no permanency to the position which would be necessary to make it a promotion as that term is usually employed. But Rules 2-b and 9-a apply to it. When ability, qualifications and capacity for greater responsibility are sufficient, the senior B&B carpenter should be assigned to the position. The evidence shows that Dean and Gardner had served as foremen and demonstrated their respective abilities to handle men and expedite work. In the instant case, the work was primarily painting and paperhanging. Dean was an experienced painter and paperhanger while claimant's experience was almost wholly that of a carpenter. There is no evidence that claimant had qualifications as a leadman which would entitle him to the position on the basis of seniority. Under Rule 9-a, management is expressly authorized to make the selection. Before a claimant has a valid claim because of being denied a leadman's position, he must affirmatively show that he had the ability, qualifications and capacity for greater responsibility. The claimant has not done this and relies upon his status as a B&B carpenter senior to the two employees used. Consequently, the record does not establish that the Carrier violated the Agreement by depriving a senior employee of the position who had the ability, qualifications and capacity for greater responsibility. Whether the leadman position should have been bulletined is not material here. It is only a senior B&B carpenter who has ability, qualifications and capacity for greater responsibility who could be injured by such a violation, if it was such. It follows that a denial award is in order.

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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1950.