

Award No. 4842

Docket No. MW-4754

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ELGIN, JOLIET & EASTERN RAILWAY COMPANY**

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

(1) That the Carrier violated the agreement by establishing the position of "Assistant Supervisor of Work Equipment" on February 1, 1947 and unilaterally establishing a rate of \$280.00 per month;

(2) That the Carrier re-classify this position as that of Motor Car Repairman Foreman and that it be posted for bids in accordance with Rule 12;

(3) That the Carrier negotiate with the Employees' representatives a proper rate of pay in accordance with Rule 57 and Rule 59 (c);

(4) That Motor Car Repairman Mike Bloomer be reimbursed for the wage loss suffered by him because of the Carrier's failure to properly classify and set the rate of this position as provided in the agreement, beginning February 1, 1947 and continuing until this violation of agreement is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Carrier has at East Joliet a Work Equipment Shop in which is repaired the various types of work equipment, such as, motor cars, track repair machinery, trucks and similar.

Under date of February 1, 1947 the Carrier unilaterally established the position of Assistant Supervisor of Work Equipment and set the rate of \$280.00 per month. This position was never advertised for bids. The Carrier filled this new position by appointment. The duties of the Assistant Supervisor of Work Equipment are as follows:

- a. He lays out the work and instructs the motor car repairmen working in this Carrier shop at East Joliet, daily.
- b. He directs and supervises the work performed by these motor car repairmen and is responsible for the proper performance of same.
- c. He reports directly to the Supervisor of Scales and Work Equipment.

There is no other employee between the rank of motor car repairman and Assistant Supervisor of Work Equipment.

On February 1, 1947, there was located at this shop referred to at East Joliet, four (4) motor car repairmen and two (2) helpers. At the present time this number has been increased to five (5) motor car repairmen and three (3) helpers. During this entire period from February 1, 1947 to the present time, these mechanics and helpers referred to have had no direct

February 28, 1947, only one, i.e., Assistant Supervisor of Work Equipment, is in existence.

Finally, the entire history of the scale and work equipment inspection and maintenance organization reveals that the employes engaged therein were never supervised by other than an official outside of the scope of the B. of M. of W. E. agreement. Therefore, if the changes in title and personnel effected February 1, 1947, did, as contended by the employes, constitute a violation of the agreement, it necessarily follows that such violation existed at least since December 1, 1945, the effective date of the present agreement, and prior to February 1, 1947, such alleged violation was with the concurrence of the employes.

In Sum: the Carrier feels that the Organization's contention that the Carrier has violated Rules 4, 12(a) and 56-I(b) of the current agreement in having created the position of Assistant Supervisor of Work Equipment and having appointed H. Pfeifer thereto and this without negotiations as to the compensation to be paid the incumbent, is in all respects groundless.

As was stated at the beginning of this argument, the question of the violation of Rules 4 and 12(a) is secondary to, and hinges upon, that of whether or not the duties of the Assistant Supervisor of Work Equipment are such as to bring the incumbent of this position within the scope of Rule 56-I(b). And it is the Carrier's contention that, for the reasons detailed immediately above, the answer to this central, and yet preliminary, question should be in the negative. The facts that: (1) the rule was not considered applicable to that position which, in essence, preceded the present one; (2) this present position differing from its excepted predecessor only as regards a change in title and person of the incumbent as well as an increase of the number of supervisory duties; and (3) the obvious consent of the Organization to the excepted character of the position which preceded this present one, all would seem to indicate that the Carrier's conduct has not been violative of Rule 56-I(b).

However, should the Board, in its discretion, rule to the contrary, the Carrier respectfully requests that, in view of the unusual circumstances of this dispute, no retroactive liability be assessed against it.

(Exhibits not reproduced.)

OPINION OF BOARD: On February 1, 1947, Carrier established the position of Assistant Supervisor of Work Equipment at a rate of \$280.00 per month at East Joliet, Illinois. The position was not bulletined, the position being filled by the appointment of H. Pfeifer, a motor car repairman junior in seniority to M. Bloomer who claims the position. It is the contention of the Organization that the position of Assistant Supervisor of Work Equipment is that of a foreman regardless of its title and that as such it is within the Maintenance of Way Agreement and subject to its terms. The Carrier contends that it is a supervisory position above that of foreman and as such is excepted from the agreement.

The Carrier has a work equipment shop at East Joliet, Illinois, where motor cars, motor vehicles and roadway machinery are repaired. When the shop was established, motor car repairmen worked under the supervision of the Superintendent of Bridges and Buildings. On March 1, 1943, Carrier established the position of Scale Supervisor, an excepted position, and subordinated it to the Superintendent of Bridges and Buildings. He had supervision of the Assistant Scale Supervisor among his other duties, the latter position being within the scope of the agreement.

On April 1, 1944, the position of Supervisor of Work Equipment, an excepted position, was established and subordinated to the Superintendent of Bridges and Buildings. On December 1, 1945, the current agreement was negotiated. Neither the Scale Supervisor nor the Supervisor of Work Equipment were negotiated into the agreement although they were supervising employes under the agreement. The Assistant Scale Supervisor and Motor Car Repairmen were specifically listed in Rule 4 as being within the agreement. The Scale Supervisor and Supervisor of Work Equipment were not

mentioned. The Employees contend the latter positions were brought into the agreement by virtue of Rule 56-I(b) which provides:

"An employe directing the work of men and reporting to officials of the railroad shall be classified as a foreman."

On February 1, 1947, the position of Supervisor of Work Equipment was eliminated and the position of Assistant Supervisor of Work Equipment was established and the work of the Supervisor of Work Equipment assigned to it. On February 28, 1947, the excepted position of Scale Supervisor was eliminated and the duties of the position assigned to the Assistant Supervisor of Work Equipment. In other words, the Assistant Supervisor of Work Equipment has more supervisory duties assigned to it than did the former position of Supervisor of Work Equipment.

The record shows that the number of motor car repairmen has been increased substantially. The Organization attempts to excuse its delay in asserting that the Assistant Supervisor of Work Equipment and its ancestral counterpart, the Supervisor of Work Equipment, were in fact foreman positions and within the scope of the agreement by stating that it was tolerant of the situation when the number of motor car repairmen was small but that it now wants the agreement enforced when the number of motor car repairmen has been substantially increased.

When the current agreement was negotiated, effective December 1, 1945, the positions of Supervisor of Work Equipment and Scale Supervisor were in existence. They were not listed in Rule 4 as were other positions agreed upon as being within the scope of the agreement. Rule 56-I(b) was not intended to apply to existing positions as they were specifically listed in Rule 4 of the agreement. We think it is clear that the positions of Supervisor of Work Equipment and Scale Supervisor were never intended to be included within the current agreement and that the failure to list them in Rule 4 indicates an intention that they should remain excepted positions as they had theretofore been. The existing position of Assistant Supervisor of Work Equipment has no duties assigned to it that have been performed by the occupant of a position within the scope of the agreement. All the duties assigned to it have been performed in the past by occupants of excepted positions. The position of Assistant Supervisor of Work Equipment has never been brought within the scope of the Maintenance of Way Agreement and consequently the claim here made is without foundation. A denial award is required.

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 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 21st day of April, 1950.