

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE NEW YORK, NEW HAVEN AND HARTFORD  
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it failed and refused to compensate Mr. Robert Heaney at his previously established Track Foreman's rate of pay while working as a Track Patrolman since December 15, 1958.

(2) Mr. Robert Heaney now be allowed the difference between what he received at the Track Patrolman's rate and what he should have received at his previously established Track Foreman's rate of pay since December 15, 1958.

**EMPLOYES' STATEMENT OF FACTS:** Prior to January 1, 1957, the Carrier bulletined the position of Track Foreman on its New York District in accordance with the Agreement rules.

The Claimant, Mr. Robert Heaney, who has established and holds seniority as a Track Foreman on the aforementioned seniority district, made application therefor and was assigned thereto effective as of January 1, 1957. The Claimant remained on that position until September 30, 1957 when he was displaced by a senior Track Foreman.

The Claimant then exercised seniority rights over a junior Track Foreman on a tamping gang and worked in that capacity until the position was abolished on October 31, 1958. From that date until December 15, 1958, the Claimant was assigned to and filled temporary positions of Track Foreman while the regular occupants thereof were absent on vacation.

On December 15, 1958, the claimant exercised seniority rights over a junior Track Patrolman, a lower rated position, because of insufficient seniority to hold a Track Foreman's position due to the abolishment of a number of such positions on January 1, 1958.

However, Carrier respectfully submits the above dissertation does not detract from Carrier's position that the letter of February 13, 1958, referred to is not a collectively bargained agreement, but merely an enunciation of policy that the former Chief Engineer on this property desired to follow. We submit that your Honorable Board must look to the controlling agreement for support of the instant claim. Carrier respectfully submits that examination of the controlling agreement between the parties will be in vain. There is no justification for the Brotherhood's request to be found in the collectively bargained agreement between the parties.

The Employees know full well that their remedy lies under the provisions of the Railway Labor Act, as amended—in collective bargaining—not through the guise of a time claim to your Board. This can be evidenced by the fact that approximately one and one-half months after decision on this case was rendered by Carrier's Vice President, the General Chairman requested conference to rediscuss this matter. Conference was arranged for July 17, 1959, and Memorandum of this meeting reveals that:

"Mr. Christensen wants to work out some mutually agreeable understanding in connection with these Foremen affected by force reductions. He referred to the Boston and Maine Railroad saying that they had such an agreement."

Proper avenue for revision of collectively bargained agreements is under the provisions of the Railway Labor Act, as amended. The policy which was advocated by former Chief Engineer Polson by letter of February 13, 1958, has no stature as a collectively bargained agreement and is not controlling in this dispute. The claim must stand or fall under the terms of the applicable collectively bargained agreement, as amended, between the parties.

The claim is without merit and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Contention in this matter arose out of re-assignment of Robert Heaney a Track Foreman from January 1, 1957 to September 30, 1957, as a Junior Track Foreman from that date until October 31, 1958, and as a temporary Track Foreman from that date until December 15, 1958 and from that date to the present as a Track Patrolman.

Claim is made he is entitled as a Track Patrolman to the pay of a Track Foreman because of the agreement of February 13, 1958 which provided:

"... in connection with reduction of track forces effective January 1, 1958, it was agreed as follows, as to foremen:

1. They will retain foreman's rate of pay until restored to their former classification and will also receive, in addition, any further increases in wages. . . ."

The record shows Robert Heaney was serving as a Junior Track Foreman on January 1, 1958, the effective date of the agreement of February 13, 1958 and continued to so serve until October 31, 1958 when he was reassigned as a Track Patrolman.

The record does not disclose any change in circumstance by the Claimant on January 1, 1958.

The agreement of February 13, 1958 is ambiguous in that it does not with particularity identify who is covered—those who are reduced January 1, 1958 or some time thereafter.

The burden of proof is on the Claimant to show that he was within the protected class. The equities or moralities of the situation are in his favor but that is not enough, strict proof must be established and this has not been done.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 has not been violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1964.