

Award No. 15930

Docket No. MW-16504

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

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

(1) The Carrier violated the Agreement when it failed to advertise (bulletin) the position of Student Foreman assigned to Mr. B. M. White. (System Case No. MofW 46-121.)

(2) The Carrier further violated the Agreement when it failed to reimburse Mr. B. M. White for personal expenses incurred while on company business in the Florence and Hayden area from January 26 to February 19, 1965 and from November 26 to December 18, 1964 while working in the Globe and Miami area.

(3) The Carrier be required to advertise (bulletin) the position of Student Foreman in compliance with Rule 10 of the Agreement.

(4) Mr. B. M. White be reimbursed in the amount of \$73.17 for expenses incurred from 1-26-65 to 2-19-65 and in the amount of \$108.10 for expenses incurred from 11-26-64 to 12-18-64 (total \$181.27) because of the violation referred to in Part (2) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant B. M. White has established and holds seniority rights in the class of laborer in the Track Sub-department, with a seniority date of August 5, 1963. On or about September 16, 1964, he was reclassified and carried on the time rolls as a Student Foreman and was assigned to Extra Gang No. 1, with headquarters at Tucson, Arizona.

Claimant White was held away from his headquarters and was required to end his day's work at Globe, Arizona for a period of seventeen (17) days while working in the Globe and Miami area; at Florence, Arizona for a period of fourteen (14) days; at Hayden, Arizona for a period of five (5) days.

The Claimant submitted a statement of actual expenses incurred during the aforementioned periods on the regular expense account forms provided by the Carrier for that purpose. The expense account forms were returned to the Claimant, and he was informed verbally that the expenses would not be allowed.

OPINION OF BOARD: The essential facts are not in dispute. Claimant seeks reimbursement for personal expenses incurred on the dates of claim while filling a student foreman position away from his assigned headquarters under Rule 29 of the Agreement between the parties.

The pivotal question for determination is one of contract interpretation. Although not stipulated, it is evident that if student foremen positions are subject to the provisions of Rule 10 of the applicable Agreement, Carrier is obligated to bulletin or advertise such positions and that failure to do so would constitute a violation of the Agreement between the parties.

Pertinent provisions of the Agreement are as follows:

"RULE 1. SCOPE

These rules govern rates of pay, hours of service, and working conditions of employees in all sub-departments of the Maintenance of Way and Structures Department (not including supervisory employees above the rank of foreman) represented by the Brotherhood of Maintenance of Way Employees, such as:"

"RULE 3. CLASSES

Each occupation in the several sub-departments shall constitute a class, and be listed by class in numerical sequence, the lowest number designating the highest class and the highest number designating the lowest class. Such sequence shall be determined by Exhibit A of Rule 26. Any existing occupation now covered by the current agreement, which is not listed in Exhibit A of Rule 26, shall constitute a class and be assigned to the proper sub-department, and shall be subject to inclusion the same as though it were listed.

Not later than 10 days following the establishment of a new class and rate of pay in accordance with the provisions of Article III of the October 7, 1959, Mediation Agreement (see Appendix A), the General Chairman of the organization will be furnished notification thereof. It is agreed that any award which might be rendered in accordance with paragraph (c) (5) of the October 7, 1959 Agreement, will be applied retroactively to the date new class and rate was established."

"RULE 5. SENIORITY

Seniority Established and Confined to Sub-Department. (a) Seniority rights of all employees are confined to the sub-department in which employed. Seniority of employees in all sub-departments shall be shown by classes and each occupation shall constitute a class. Each class shall be listed in numerical order beginning with number one (1), which shall designate the highest class, and the highest number shall designate the lowest class.

Seniority in the classes of laborers and helpers shall begin at the time an employee's pay starts in that class. Seniority in all other classes

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shall begin as of the date the employe is assigned by assignment notice to the class or as of the date that he qualifies for a class under the provisions of Rule 8 of this agreement."

"RULE 6. SENIORITY ROSTERS

When Provided. (a) Seniority rosters as of January 1st shall be compiled each year by sub-department and seniority district, and furnished to the employes affected not later than the 25th day of February, except that seniority rosters of laborers in the Track Sub-department shall be posted on the bulletin board provided at gang headquarters and work locations. Seniority rosters shall show the name in full, Social Security Account number, and date of entry of all employes into the service of the Company. They shall also show the seniority date of all employes in each of the respective classes of the sub-department, and shall be separately compiled."

"RULE 10.

ADVERTISEMENTS, ASSIGNMENTS AND CANCELLATIONS

Advertisements. (a) New positions and permanent vacancies (excepting positions of laborer and helper) shall be bulletined within 25 days previous to or 10 days following the establishment of the position or occurrence of permanent vacancy.

Temporary vacancies (excepting positions of laborer and helper) shall be bulletined within 25 days previous to or 10 days after they occur, except that vacancies of 30 days or less need not be advertised. Such advertisement shall reflect the name of the employe whose position is being advertised and the approximate duration of the assignment, so far as practicable. Vacancies created by an employe bidding in a temporary vacancy shall likewise be bulletined as a temporary vacancy. Upon return to service an employe whose position has been temporarily assigned shall return to such position, provided it has not been abolished or taken by a senior employe through displacement in which case the returning employe shall exercise displacement rights in accordance with Rule 13. Other employes similarly affected shall have the same right.

Assignments. (b) New positions and vacancies subject to advertisement shall be bulletined for a period of 10 days. Applications for new positions and vacancies subject to advertisement must be filed with the official whose name appears on the advertisement notice, not later than 12 Noon of the 10th day from date of bulletin, and applications not so filed will not be considered. Copy of applications shall be furnished to the Division Chairman. Employes who make application for positions advertised on assignment notices shall be permitted to withdraw their application prior to 12 Noon on closing date of advertisement notice; thereafter such withdrawals shall not be permitted.

Senior applicants for positions advertised shall be assigned by assignment notice within 5 days after close of advertisement notice. Successful bidder shall be placed on the position within 10 days after he is assigned to the position unless prevented by sickness, vacation, or leave of absence."

"RULE 29. EXPENSES

When Entitled. (a) If an employee assigned to a gang, or one who is assigned to work within specific limits, is sent out to perform work away from the gang or outside such limits prior to his regular lunch period, and as a result thereof incurs expense for lunch which he otherwise would not have had, he shall be reimbursed for such expense involved. If kept out three hours or more subsequent to his regular quitting time, actual expenses shall be allowed for supper.

Employees who are required to stay overnight away from their designated headquarters shall be allowed actual necessary expenses involved."

Carrier asserts that student foremen have been appointed without regard for seniority for the past thirty-six (36) years, and that student foremen are not in any seniority class subject to the bulletin rules requiring advertisement of positions in seniority classes for seniority choice. Carrier avers that a contrary interpretation of Rule 10 of said Agreement would contradict provisions of Rules 3 and 5 (a), which in part provide that each occupation in the several sub-departments shall constitute a class which shall be listed in numerical order beginning with number one (1) as the highest class and the highest number designated the lowest class. Carrier construes the fact that "Student Foremen" are listed last without numerical designation in the Class And Wage Schedule (Track Sub-Department), contained in Rule 26, to mean that "student foremen" are outside any seniority class, and that Carrier is not required to follow bulleting procedures in selecting applicants.

In the first instance, Petitioner contends that past practice is not controlling because the applicable language of the Agreement is clear and unequivocal. Petitioner avers that the Scope Rule of the Agreement excludes only supervisory employees above the rank of foreman and that Rule 10 now makes it mandatory that Carrier bulletin all positions except positions of laborer and helper, which are specifically excluded.

Furthermore, Petitioner points out that most of the thirty-six (36) years of practice relied on by Carrier preceded the present language found in Rule 10, which did not become effective until July 1, 1964. The applicable Rule prior to July 1, 1964 listed specific positions subject to advertisement and did not include positions of student foremen.

Carrier asserts that Rules 3 and 5 (a) as well as the applicable Class And Wage Schedule found in Rule 26 show that the student foreman status is neither a seniority class nor an occupation, and that the classification is only covered by the present Agreement with respect to wages.

Despite the comprehensive defense offered by Carrier, the Board is necessarily confined to a consideration of the language of the applicable rules of

the Agreement in evidence. Although the Class And Wage Schedule (Track Sub-Department) found in Rule 26 contains no numerical designation for Student Foremen, that Classification appears therein without any notation that the student foremen designation does not constitute a seniority class or occupation as asserted by Carrier. Furthermore, careful analysis of other pertinent provisions such as Rules 1 and 10, clearly support Petitioner's averment that student foremen are covered by all Rules contained in the present Agreement between the parties as opposed to the narrow coverage suggested by Carrier. We are here concerned with the language found in the Agreement at the time the dispute arose and past practice under substantially different language pertaining to advertising of positions has no significance. In view of the foregoing, we must conclude that the Carrier violated Rule 10 of the controlling Agreement, when it failed to advertise the position filled by Claimant.

At the time Claimant was offered and accepted the position of student foreman, he was attached to Carrier's Extra Gang No. 1 with headquarters at Tucson, Arizona. On the claim dates, he served away from Tucson and incurred the actual necessary expenses for which reimbursement is requested in the instant claim pursuant to Rule 29 of the applicable Agreement. In view of our previous finding that Carrier initially violated Rule 10 of said Agreement when Claimant was appointed to the position of Student Foreman, it necessarily follows that the provisions of Article 29 are applicable. The Claim will be sustained in its entirety.

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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of November 1967.

**CARRIER MEMBERS' DISSENT TO AWARD 15930,
DOCKET MW-16504 (Referee Ives)**

It is undisputed that for a period of 36 years compensated student foreman training has been made available by this Carrier to interested employees on a voluntary basis and such training has not been regarded as positions subject to the exercise of seniority.

Receiving this training does not affect one's seniority standing for promotion to foreman or assistant foreman positions. It is simply compensated training in foremanship for those interested in learning how to become a foreman.

It is obvious that this voluntary procedure permits proper distribution of adequate training instead of allowing a senior man to demand the training in preference to an untrained junior man where the senior man has already received adequate training. It is equally obvious that any system which permits a man who has been through adequate training to demand additional unneeded training in preference to an untrained junior man merely because of seniority is incompatible with a sensible on-the-job training program for an adequate number of men.

Aside from citing a large number of rules which are manifestly irrelevant to the controlling question, Petitioner in this case based the claim squarely on the recent changes to Rule 10 (Advertising Positions and Vacancies). The net result of the changes in Rule 10 is simply that certain positions which were previously required to be filled under the general seniority rules which give the senior man a right without bidding are now included in the bidding provisions and are filled only by the senior man who bids.

In view of more than 30 years of agreement on the point that student training was not a position coming under any of the seniority provisions of the agreement, neither those administered through bidding nor those administered without bidding, we see no basis in common sense for the contention that an agreement transferring positions from the coverage of the seniority rules administered without bidding to the coverage of rules providing for the exercise of seniority preference through bidding has the effect of converting such training into a position subject to seniority. To us, the 36-year practice of regarding student training in its true character of mere training and not a position subject to the exercise of seniority is just as valid and meaningful whether the positions which are subject to the exercise of seniority are distributed through a process of advertisement and bidding or through a process of recognizing seniority without bidding. Neither the Employees nor the Referee has given us any reason whatever for the conclusion that the change in the bidding rule has some logical bearing on the status of training as training and not a position as established by this 36-year practice. This conclusion, which lies at the base of this sustaining Award, is utterly illogical and arbitrary.

Furthermore, as the record shows, the parties clearly indicated in their agreement the sensible intention that student training should continue to be properly regarded as training and not as a position or occupation in any seniority class. This intention was manifested by repeatedly providing in the agreement that seniority classes "shall be listed in numerical order beginning with number one (1), which shall designate the highest class, and the highest number shall designate the lowest class." While all positions were thus num-

bered in the Appendix to Rule 26, the student foremen were placed separately at the end of the Appendix, without any number whatever. On the basis of pay rate attached to the student foremen status, had it been regarded as a seniority class, it would have been numbered high among the classes, near the beginning rather than at the bottom of the list. This individual treatment of the student foreman status clearly indicated that the parties did not regard it as a seniority class or as a position subject to seniority.

Thus, the manifest purpose of the training program, the admitted practices of the parties for more than three decades, and the specific provisions of the agreement all support the Carrier's position in this case. There is nothing in the record that logically supports the sustaining Award.

We think the Award is good-for-nothing and we dissent.

G. L. Naylor
R. E. Black
P. C. Carter
W. B. Jones
G. C. White