

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20284
Docket Number MW-20311

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Delaware and Hudson Railway Company

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

(1) The Carrier violated the Agreement when, at the close of work on Friday, October 29, 1971, it abolished a position of Mason Foreman and transferred the work formerly performed by a Mason Foreman to a Carpenter Foreman. (System File 2-11 Case No. 1.72 MW)

(2) The position of Mason Foreman now be advertised and awarded in accordance with the provisions of rules contained in Agreement effective November 15, 1943, as presently revised.

(3) Mason Dominick N. Mamone be allowed the difference in pay between what he did receive at the Mason's rate and what he should have received at the Mason Foreman's rate from November 1, 1971, until such time as the violation is corrected.

OPINION OF BOARD: Prior to October 29, 1971, Carrier employed two B&B gangs, B-10 and B-12 at Colonie, New York. Gang B-10, supervised by a Carpenter Foreman, consisted of two carpenters, a carpenter helper and a painter; Gang B-12, supervised by Claimant as a Mason Foreman, consisted of two carpenters, two carpenter helpers and a mason. As of November 1, 1971 Carrier combined the two gangs into one gang, Gang B-10, consisting of four carpenters, two carpenter helpers, two masons and one painter all under the supervision of the Carpenter Foreman. As a result of this consolidation Claimant was forced to exercise his seniority in a lower class, as a mason.

Petitioner alleges that Carrier violated the Agreement when it abolished the position of mason foreman and transferred the work formerly performed by that mason foreman to a carpenter foreman. The Organization argues that composite gangs, such as B&B Gang B-10, may not be established by Carrier without negotiation and agreement between the parties. In support of this position Petitioner cites Rules 3(a) and 36(a) claiming that those rules "...prevent the creation of composite gangs and prevents the assignment of work without regard to class designation." Rule 3(a) and the pertinent portions of Rule 36(a) are as follows:

"Rule 3(a) Seniority rights of employees, except trackmen and laborers, are confined to the sub-department and class in which employed and to the division on which they are located."

"Rates of Pay - Rule 36(a) The following rates of pay are hereby incorporated in and made a part of this agreement:

Occupation	Rate
Carpenter Foremen.....	\$214.73
Painter Foremen.....	\$214.73
<u>Mason Foremen.....</u>	<u>\$214.73"</u>

Carrier asserts in denying the arguments of Petitioner, that there is no prohibition in the rules for the establishment of composite gangs and points to many examples of their existence over the years (including B&B Gang B-12). Further Carrier argues that this issue has been disposed of in Award 14457 involving the same parties and Agreement. We note that in that Award we said that the Carrier reserves the right to assign foremen as it deems necessary.

Petitioner's position in this dispute fails in two critical areas. There is no evidence in the record that Claimant actually performed work entitling him to the Mason Foreman rate; further there is no evidence whatever that the Carpenter Foreman performed any work which is normally within the purview of a Mason Foreman. Given these flaws and the fact that there is no apparent rule support for Petitioner's position, the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.