

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Detroit, Toledo and Ironton Railroad Company

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

(1) The Carrier violated the Agreement between The Detroit, Toledo & Ironton Railroad Company and the Brotherhood of Maintenance of Way Employes effective April 1, 1942, together with supplements and amendments thereto, when it failed and refused to bulletin the position of Repairman-First Class at Flat Rock, Michigan to employees covered thereby, but instead assigned the duties thereof to a Grand Trunk Western Railroad Company employee (Carrier's File 8365-1-183).

(2) As a consequence of the aforesaid violation, Mr. J. W. Henry shall be compensated for all money loss suffered beginning August 7, 1984 and continuing until the position referred to in Part (1) hereof is bulletined and assigned to the senior applicant."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization and Carrier entered into an Agreement of April 9, 1984, wherein the positions of Foreman and Repairman along with the incumbents would transfer from Napoleon, Ohio, to Flat Rock Yard, Michigan. The incumbent of the Foreman's position, by Agreement, could exercise his seniority rather than transfer. On May 7, 1984, the Carrier effected the change.

The record indicates that the Foreman exercised his seniority rather than transfer with the position while the incumbent of the Repairman's position transferred with the position to Flat Rock Yard. On September 14, 1984, the Carrier issued two Bulletins abolishing the positions of Foreman effective May 7, 1984, and Repairman effective August 7, 1984, at Flat Rock Yard, Michigan.

The Organization filed claim by letter of September 24, 1984, alleging Carrier violation of that Agreement. It is the Organization's position that the April 9, 1984, Agreement was violated when the Carrier refused to maintain the two positions at Flat Rock Yard. It argues that the positions were not transferred, nor vacancies advertised. As such, Claimant was denied his right to exercise seniority to the vacant position.

This Board has reviewed closely the arguments and issues raised on property with those which were presented ex parte. The employee statement and new arguments as to who is doing the work and the appropriate remedy are barred from consideration, as they were not discussed while handling this case on the property (Third Division Award 24965).

In our review of the on property record we fail to find any cited rule or provision agreed upon by the parties which was violated. This Board must find a rule cited by the Organization which was alleged to be violated. Thereafter, probative evidence of record must support the fact that the Carrier violated the rule. We cannot find any action of the Carrier inappropriate under the Railway Labor Act unless and until it is violative of an Agreement provision (Third Division Award 21858).

Our review of the Agreement provisions cited by the Organization show no terms or rules that limit Carrier from abolishing the Foreman and Repairman positions. There is no evidence that Carrier failed to properly transfer positions and incumbents. We find no Agreement protection or any rule negotiated between the parties which prohibited Carrier from its actions. Finding no Agreement provision limiting Carrier from abolishing the positions, the Claim must be dismissed (Third Division Award 26906).

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.