

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Atlanta and West
(Point Railroad Company)

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

(1) The Agreement was violated when the Carrier failed and refused to establish and maintain two (2) Apprentice Foremen positions on Roadmaster E. D. Hodge's district [System File 37-AWP-WofA-88-5/12(88-220)].

(2) The Carrier shall, promptly establish and maintain two (2) Apprentice Foreman positions on Roadmaster E. D. Hodge's district in compliance with Rule 12, Section 4."

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.

Rule 12, Promotion reads in part as follows:

"Section 4

For training and promotion purposes, the Carrier will provide at least one (1) Assistant Foreman in the Bridge and Building Subdepartment. Extra gangs in the Track Subdepartment consisting of fifteen (15) men or more, including Foremen and excluding cook, will be provided with an Assistant Foreman. Additionally, there will be at least two (2) Apprentice Foremen provided on each Roadmaster's district."

The Carrier has previously complied with this Rule through the establishment of two Apprentice Foreman positions with each Roadmaster. A new Roadmaster position was established by assignment of part of the territory under another Roadmaster. The Carrier declined to establish Apprentice Foreman positions in connection therewith, citing the absence of need for the purposes of "training and promotion." The Organization seeks enforcement of Section 4 as written.

The Carrier relies on Rule 52 (b) which states as follows:

"(b) The listing of rates of pay in the Agreement does not constitute a guarantee of the continuance of any position or any certain number of positions or anything else other than as stated in Paragraph (a) hereof."

The Carrier further refers to its recognized right to abolish unneeded or unwanted jobs.

The Board supports the Carrier's view as to its widely recognized managerial rights concerning force size. Here, however, the Agreement is clear and specific in yielding the extent of such rights. Rule 52 (b) applies to the "listing of rates of pay" and cannot be broadened to apply where a contrary requirement is indicated.

Rule 12, Section 4 does not provide for positions for training and promotion purposes only when considered necessary or desirable by the Carrier. Rather, it is a manning requirement mutually agreed to by the Carrier and the Organization. That the Carrier sees no "need" for the positions here under review is understandable. The remedy, however, is a change in the Rule under appropriate procedures and not simply to ignore the requirement.


The Carrier argues that the Board may not establish new positions on its own, and many previous Awards support this view. Here, however, the Board does not exercise such authority. What is involved here is enforcement of an existing Rule which, in effect, has pre-established certain positions by mutual agreement. The fact that the Rule specifies the "purposes" for which the positions have been established does not diminish the effectiveness of the Rule. Having established a new Roadmaster position, the Carrier must meet the consequences as specified in the Rule.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bevel - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1991.