

PUBLIC LAW BOARD NO. 1760

Award No. 81

Case No. 81

Docket No. MW-MOB-85-47

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
(Former Wabash)

Statement

of Claim: 1) Claim on behalf of Mr. W. O. Buckman for restoration of a Water Service Foreman's position and the difference in pay between that position and the B&B Carpenter's position he now holds.

2) Claim to place water service foreman positions at Moberly, Mo., Decatur, Il., St. Louis, Mo. and Ft. Wayne, In. under the supervision of the Engineering Department rather than the Mechanical Department.

Findings: The Board has jurisdiction of this case.

Claimant, a former Bridge and Building Carpenter Helper, was awarded a Water Service Foreman's position at Moberly, MO, on March 8, 1976. His position was represented by the Organization. However, Claimant supervised the activity of "water service maintainers," who were represented by the Sheetmetal Workers International Association. Their primary duties include the repair of drainage lines, piping and plumbing at Carrier's facilities and offices located on the former Wabash Railroad.

All water service foremen maintainers were transferred, on March 1, 1982, from the general supervision of the Carrier's Engineering Department to the supervision of the Mechanical Department.

As a result of the retirement of many Carrier facilities, many Water Service employees dwindled. The last Water Service Mechanic at Moberly left on a disability in March 1985.

The Claimant performed all water service maintenance, alone, at Moberly until November 1985 when he was joined by a Water Service Mechanic who had been furloughed from another point.

Carrier, in view of the fact that Claimant had only one mechanic to oversee, abolished his position on November 15, 1985. The remaining mechanic left service on a disability, on July 14, 1986, and his position has not been filled since then.

The claim has all the appearances of being of a sensitive nature. The Board could not permit a circumstance to exist whereby the Carrier would remove a position from underneath the scope of one agreement in order to have the work performed by employees of another craft or even

by non agreement personnel. However, such was not shown to be fact in this instance.

Carrier's time limit argument is not applicable to the facts of the instant situation and is therefore dismissed.

As to claim #1 if there are no water Service Maintainers positions to require a foreman, the Board is without authority therefor to sustain claim #1. As pointed out by Fourth Division Award 2960:

"Barring a contractual prohibition to the contrary, Carrier may abolish a position when it determines that said position is no longer necessary. Yet in so doing, Carrier cannot remove work belonging to a craft and require others to perform it. Thus, to prevail herein, the Petitioner must prove by substantial evidence that Carrier used non-yardmasters to discharge responsibilities that belonged to yardmasters after the third trick yardmaster at Pittsburgh was abolished."

Claim #2 must be dismissed as such claim does not constitute a valid claim arising under the provisions of the schedule agreement between the parties. As noted from Carrier's May 30, 1986 letter:

"...The foreman position at Moberly, MO, was not a supervisory foreman position but the occupant was performing normal and routine maintenance work prior to the abolishment of said position. Further, there was and is only one (1) of water service maintainer working in Moberly. Therefore, it was and is unnecessary for the Carrier to retain in service one Foreman to oversee the activities of one maintainer."

See Third Division Awards 4992, 14957, 20284 and 20445.

The Board is not passing on arguments raised in the Employees Position re: farming out work customarily performed by water service maintainers who are represented by the Sheet Metal Workers International Association.

Award: Claims denied as per findings.

Sol Hammons Jr.

Sol Hammons, Jr., Employee Member

J. Abbateello

J. Abbateello, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member

176424, 1991
Issued June 9, 1988.