

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
NORFOLK & WESTERN RAILWAY COMPANY

Case No. 69

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

1. The Carrier violated the Agreement when it allowed employees covered by the Scope of the American Railway Supervisors Association Agreement to retain seniority under the Scope of the Maintenance of Way Agreement. (File MW-BLVE-88-44)
2. That R. G. Cross, M. J. Freeman, J. R. Kazmierczak, and G. A. McAbee shall be removed from the Bridge and Building seniority rosters coming under the Maintenance of Way Agreement.

FINDINGS:

Claimants R. G. Cross, M. J. Freeman, J. R. Kazmierczak, and G. A. McAbee were employed by the Carrier as bridge inspectors.

On March 18, 1988, the Organization notified the Carrier that it had violated the provisions of the parties' effective working agreement dated February 1, 1951, when it permitted Claimants R. G. Cross, M. J. Freeman, J. R. Kazmierczak, and G. A. McAbee, who were covered under the scope of the parties' working agreement, to remain on the seniority rosters in the Bridge and Building Sub-Department after they were assigned to bridge inspector positions. The bridge inspectors are not covered under the scope of the parties' working agreement nor are they classified as supervisors. On April 25, 1988, the Carrier replied stating that it had committed no rule violations and that

it is the employee's responsibility to protest any errors, in writing, to the Carrier's office. This matter then came before this Board.

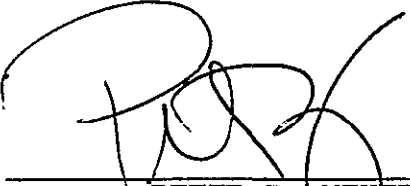
This Board has reviewed the record in this case, and we find that Rule 18 clearly states that employees promoted to supervisory positions with the Company will retain and continue to accumulate seniority that was previously held under the Maintenance of Way agreement. The record reveals that two other employees were previously promoted to bridge inspector and later exercised their seniority to go back to the B & B Gang. Moreover, the position of bridge inspector is covered by the Supervisors' Association (ARASA).


The Carrier has the right to determine who its supervisors are without interference by the Organization. In the past, employees have been promoted into supervisory positions and then utilized their seniority to go back into a bargaining-unit position. They did not forfeit the agreement.

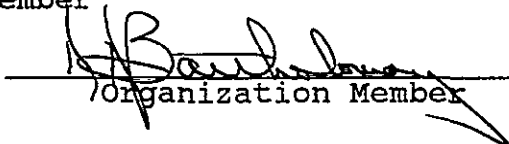
This Board cannot find that the Organization met its burden of proof in this case. Therefore, the claim must be denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Dated: April 29, 1991