

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

)
) Case No. 25
)
) Award No. 25
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
J. F. Ingham, Carrier Member

Hearing Date: June 25, 2002

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier abolished the Gary, Indiana carpenter position of Mr. J. Woodbury effective at the end of the workday on February 8, 2001 and assigned those duties to Mechanical Helper J. Milevski beginning on February 12 and continuing until March 19, 2001. (System File GC-10-01/UM-10-01).
2. As a consequence of the violation referred to in Part (1) above, Claimant J. Woodbury shall "... be compensated for all time lost from the end of the work day on February 8, 2001 until March 19, 2001 when he returned to his carpenter position."

FINDINGS:

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

This case arises out of the same facts as the claim in Case No. 24, Award No. 24. The Organization contends that the abolishment of Claimant's carpenter position violated Rule 39. Rule 39 provides:

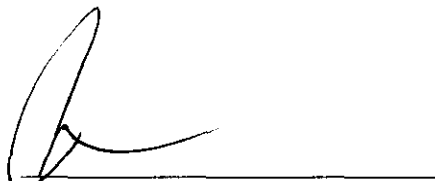
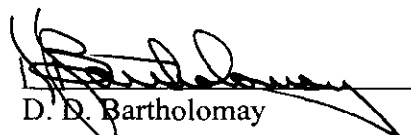
Established positions shall not be discontinued and new ones created under the same or different title covering relatively the same class or kind of work for the purpose of reducing the rate of pay or evading the application of these rules.

The Organization contends that Claimant's position was abolished to facilitate his replacement by a mechanical helper who actually performed carpenter's work but was paid at a lower rate. The Organization further contends that Carrier's purpose in taking this action was to evade other rules of agreement whereby the employee who filled the mechanical helper position was a protected employee and entitled to be paid despite an abolishment of the trackman position that the employee held prior to assuming the helper position.

The Organization's claim depends entirely on proving that the mechanical helper did, in fact, perform the work of Claimant's position that was abolished. In Case No. 24, Award No. 24, we held that, on the record presented, the Organization failed to meet its burden to prove that the mechanical helper in fact performed carpenter work. The record in the instant case is no different. Accordingly, the instant claim must also be denied for lack of proof.

AWARD

Claim denied.


Martin H. Malin, Chairman
J. F. Ingham
Carrier Member
D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, December 11, 2002.