

**PUBLIC LAW BOARD NO. 6249**

**PARTIES    )       BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**TO           )**  
**DISPUTE    )       UNION PACIFIC RAILROAD COMPANY (FORMER SOUTHERN**  
**)       PACIFIC TRANSPORTATION COMPANY (EASTERN LINES))**

**STATEMENT OF CLAIM**

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, effective May 24, 1996, the Carrier abolished the Bridge Inspector position held by Mr. L. D. Halsell and thereafter readvertised that position and the Assistant Bridge Inspector position and assigned those positions to junior employees instead of assigning Mr. Halsell who placed a bid for both positions (System File MW-96-159/BMW 96-269 SPE).

2. As a consequence of the violation referred to in Part (1) above, Mr. L. D. Halsell shall be allowed "... the difference in rate of pay between a B&B Foreman, \$2840.79 and a B&B Inspector, \$2953.95 from July 8, 1996 and on a continuing basis and to be assigned to the position of B&B Inspector account job was assigned to a junior employee by the Carrier."

**OPINION OF BOARD**

Claimant held seniority as an Assistant Bridge Inspector as of June 1, 1983 and as a Bridge Inspector as of July 1, 1984 on the Carrier's San Antonio Division.

By notice dated May 20, 1996, Claimant was advised that his Bridge Inspector's position at San Antonio (which the Organization states Claimant held for 12 years) was abolished effective May 24, 1996. In that notice, Claimant was advised to exercise his seniority. Claimant did so and obtained a B&B Foreman's position at a lower rate of pay than his former Bridge Inspector's position.

The Carrier advertised Bridge Inspector and Assistant Bridge Inspector positions. Claimant bid on both positions. The Carrier assigned the Bridge Inspector's position to S. F. Kemp and the Assistant Bridge Inspector's position

to B. T. Murdock. Kemp and Murdock were junior to Claimant.

According to the Carrier, Kemp was a B&B Foreman and Assistant Foreman. Claimant asserts that he should have been assigned the Bridge Inspector's position.

In a letter dated September 11, 1996, with some detail, the Carrier asserted that Claimant's performance as a Bridge Inspector was deficient.

Article 40 (cited by the Organization on the property and therefore properly before this Board) states in pertinent part:

**ARTICLE 40**

**B&B INSPECTOR AND ASSISTANTS**

\* \* \*

**SECTION 4** - Employees selected and assigned to such positions classified as Bridge and Building Inspector and Assistant Bridge and Building Inspector shall not be subject to promotion, assignment and displacement rules, but in filling such positions preference shall be given to employees holding seniority rights in the B&B Department as foreman, assistant foreman or mechanics (carpenters).

\* \* \*

In light of that language, the Organization cannot demonstrate a violation of the Agreement.

First, under the plain language of Article 40, Section 4, assignments to

the Inspector and Assistant Inspector positions "shall not be subject to promotion, assignment and displacement rules". The only stated requirement is that "preference shall be given to ... B&B ... foreman ...." Kemp was a B&B Foreman. Notwithstanding Claimant's greater seniority, Kemp therefore could be given "preference" to the assignment sought by Claimant.

Second, because of the language in Article 40, Section 4, the Carrier exercised a managerial prerogative when it abolished Claimant's Bridge Inspector's position and then assigned that position to Kemp over Claimant. While Article 40, Section 4 states that employees for such assignments "shall not be subject to promotion, assignment and displacement rules", the Carrier's ability to abolish Claimant's position and then make the assignment to Kemp is not unfettered and unreviewable. As in the exercise of all managerial prerogatives by the Carrier, this Board can examine the Carrier's actions. However, the scope of that review is not to determine whether the Carrier was correct in its decision, but that review is only to the limited extent of

determining whether the Carrier's decision was arbitrary.

Because this is a contract dispute, the burden is placed on the Organization to show that there was arbitrary conduct by the Carrier. Here, the record does not support a conclusion that the Organization carried its burden.

Arbitrary conduct is defined as action that is without rational basis, justification or excuse. The Carrier based its decision concerning Claimant on the contention set forth in some detail in the record that there were deficiencies in Claimant's performance. See the Carrier's September 11, 1996 letter. The Organization disputed those contentions. However, at best, the record is in conflict concerning the underlying circumstances which resulted in Claimant's position being abolished and the subsequent awarding of the position to Kemp over Claimant. But a record in conflict does not amount to a showing by the Organization that the Carrier did not have a rational basis for its decisions. Arbitrary conduct has therefore not been shown.


The claim must therefore be denied.<sup>1</sup>

**AWARD**

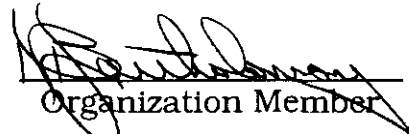
Claim denied.



Edwin H. Benn  
Neutral Member



Carrier Member



Organization Member

Dated: April 4, 2002

<sup>1</sup> While the first paragraph of the claim protests the assignments to both the Bridge Inspector and Assistant Bridge Inspector's positions, the second paragraph of the claim seeks relief only for the Bridge Inspector's position. Because of the development of the record on the property, the discussion in this award specifically addresses the assignment of Kemp to the Bridge Inspector's position over Claimant. However, the result would not be different if the focus also addressed the assignment of the Assistant Bridge Inspector's position to Murdock.