PUBLIC LAW BOARD NO. 1838

Award No. 39

Carrier File MW-WS-78-9

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Norfolk and Western Railway Company

Statement of Claim: The employes request that Claimant H. H. Comer be paid the difference in rate of pay between Mason Foreman and the rate of pay of a Mason Helper continuing each work day starting December 23, 1977, through April 10, 1978, account claimant being cut off as Mason Foreman on above date.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The General Chairman instituted the instant claim by letter, dated January 10, 1978, in pertinent part, reading:

> "We have been furnished with information that the above claimant was cut off as a mason foreman on December 23, 1977, and K. E. Morris, a junior employee and carpenter foreman, is doing mason's work at Winston-Salem, North Carolina on AFE 28174.
>
> We are requesting that claimant be paid the difference between mason foreman and mason helper beginning with December 23, 1977, and continuing so long as this continues to exist.
>
> We are citing Rules 2 and 15 of the current M/W Agreement, as well as any other rules which might pertain thereto in support of this claim."

Carrier in denying the claim held:

> "Initially, we find your presentation of this matter to be vauge and lacking sufficient information to enable Carrier to determine either the nature of the alleged violation of which you complain or the specific agreement provisions upon which you wish to rely in establishing claimant's entitlement to the work in question or to the additional unearned

compensation requested on his behalf. We are unaware of, nor have you cited, any rule of the working current working agreement which could remotely be interpreted as entitling claimant to the work in question to the exclusion of all other classes or crafts of employees.

Do to the vaugeness and lack of specificity in your presentation of this matter, we are unable to respond further. All divisions of the NRAB have consistently ruled that the burden of supplying facts in support of a claim rest squarely upon the claimant.

Under the circumstances, we find there has been no violation of Rules 2 and 15 or any other rule of the current working agreement and this claim is, therefore, declined."

When Rule 2 - Seniority Groups, Classes and Grades - and Rule 15 - Filling New Positions and Vacancies Pending Bulletining and Assignment - are applied to the sparse and vague facts supplied by Claimant we are impelled to be guided by Third Division Award 19833 (Sickles) which held:

"This Board is fully aware of the very serious consequences of a Scope Clause. Surely a Carrier must refrain from removing work from a class when it has agreed to refrain from said action by contractual language, but just as surely, a Carrier must not be found guilty of such a severe violation without more than a conclusionary allegation, supported by a few isolated assertions which fail to specify with any degree of certainty the specific nature, times and amount of removal. The burden of proof rests with the Organization. That burden exists for the protection of both parties as well as the Board and it is incumbent upon the claimant to produce sufficient evidence to support the version of the facts upon which it relies. SEE AWARD 10067 (Weston). Here we have just a fleeting glimpse of the asserted facts.

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Determination of rule violation should, whenever possible, be made on the specific merits of each individual case. In that manner, in the final analysis, all parties are better served. Unfortunately, in the case at issue, this Board is unable to consider and discuss the dispute in that light inasmuch as we

have before us only ultimate conclusions, without factual demonstrations sufficient to base the determination. In short, the claim must be dismissed because the Organization failed to submit factual evidence for our consideration."

Consequently, this claim will likewise be dismissed without prejudice to the position of the parties.

Award: Claim dismissed.

A. D. Arnett, Employee Member

G. C. Edwards, Carrier Member

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, September 30, 1980.