

PUBLIC LAW BOARD NO. 2529

AWARD NO. 33
CASE NO. 42

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) AND
TO)
DISPUTE) BURLINGTON NORTHERN RAILROAD (Former FW&D)

STATEMENT
OF CLAIM:

1. That the Carrier violated the provisions of the current Agreement and Mediation Agreement of October 7, 1959 when it assigned certain junior employees to perform the work of Foreman-(Track Inspector) without notifying the General Chairman for the purpose of mutually agreeing upon a rate of pay which would be satisfactory to both parties and instead assigned employees to perform the duties at the rate commensurate to their current titles.
2. That the Carrier will now be required to compensate Foreman Mr. E. F. Kelly the differential between what he earned and the rate applicable to Foreman-(Track Inspector) on the Burlington Northern Railroad for the period of time that Extra Gang No. 11 was working on the JTD.
3. That the Carrier be required to compensate Mr. E. Young the differential in the what he earned and the rate applicable to Foreman-(Track Inspector) on the Burlington Northern Railroad beginning October 5, 1985 until the violation ceases.
4. That Foreman Lee Kennard be compensated at the rate applicable to Foreman-(Track Inspector) on the Burlington Northern Railroad for all time expended by junior employee Mr. Ed Young who performed the duties common to the Foreman-(Track Inspector) beginning October 5, 1985 to October 21, 1985 and commencing again on October 29, 1985 until the violation ceases.

FINDINGS:

By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and Carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction over the parties and the subject-matter.

On June 12, 1985, the Carrier posted Bulletin Notice No. 119, advertising for position of "One Foreman - (Track Inspector)". On June 28, 1985, the Carrier cancelled the Bulletin Notice No. 119. The Carrier did not fill the advertised position.

On July 1, 1985, the General Chairman filed a grievance with the Carrier, contending that the Carrier had failed to comply with Mediation Agreement of October 7, 1959 in that the Carrier had not notified the General Chairman of its intention to establish such a position pursuant to said Agreement. In its July 1 letter, the Organization stated, in part:

"The carrier at no time prior to effecting this change did in fact notify the General Chairman in accordance with the provisions above. Had they so informed the General Chairman we would have advised that it is the General Chairman's contention that there has been an expansion of duties and responsibilities of supervisor employees covered by the collective agreement by the parties hereto resulting in the request for wage adjustments and a mutual agreement reached at disposal of the issue raised. We were, however, not given that opportunity, therefore, as a result of the change of work methods mentioned it is our contention that there has been an expansion of duties and responsibilities for section foremen by adding title of Track Inspector and we are requesting that Track Inspector's position be rated on a monthly rate of pay to \$2,315.23 per month, this monthly rate correlated to what is currently paid for Track Inspector position under the Burlington Northern Agreement effective September 1, 1982.*** Further, if in the event we are unable to arrive at a favorable decision at such conference we respectfully request that you submit the following question to a three (3) member Board of arbitration as provided under Appendix A, Article III, paragraph (c). Question to be submitted to the Board for decision;

Should the current monthly rate established for Section Foremen - Track Inspector position rate of pay as set by carrier be continued or should the rate of pay be adjusted and increasing it to \$2,315.23 per month on same condition as now paid under the Burlington Northern Agreement effective September 1, 1982 as requested by the Brotherhood of Maintenance of Way Employees General Chairman Ben Ochoa?

On July 23, 1985, the Carrier responded to the above letter of July 1, stating in part: "Bulletin No. 119 did in fact advertise for position of foremen (Track Inspector) to be assigned at Ft. Worth. This bulletin was recognized as not being proper and was cancelled by notice 119-A on June 28, 1985, with copy given to you....This position was not assigned therefore no position was established nor do we intend to establish a position at this time."

On December 2, 1985, the instant set of claims was grieved with the Carrier.

It is clear that the Organization's letter of July 1, 1985 proposing arbitration as provided under Appendix A, Article II, paragraph (c) of the October 7, 1959 Mediation Agreement was fully consistent with the language of that Agreement, Article III, stating

"If, as the result of change in work methods subsequent to the effective date of this agreement...resulting in request for wage adjustment and mutual agreement is not reached disposing the issue thus raised, the matter will be submitted to arbitration in accordance with Paragraph (c) of this Article."

In the circumstances of this case, considering the October 7, 1959 Mediation Agreement and the handling and passage of time from July 23, 1985 until December 2, 1985, this Board will not determine the merits of the instant claims.

A W A R D

The claims are dismissed.

Joseph Lazar

JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

C. F. Foose

C. F. FOOSE, EMPLOYEE MEMBER

L. Mares

L. MARES, CARRIER MEMBER

DATED: 12/5/86