

PUBLIC LAW BOARD 3530

Award No. 5
Case No. 5

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Shovel Helper, B.D. Bailey, 1706 South Avenue, Princeton, WV 24740, was furloughed as Shovel Helper because Carrier alleges that he was not needed. Employees request pay for lost time, with vacation and seniority rights unimpaired.

FINDINGS:

In July of 1981 Claimant was employed as a shovel helper on Carrier's Shovel 10142. Effective July 10, 1981, Claimant's position was abolished. On August 25, 1981, the organization filed a claim protesting Carrier's action and requesting that Claimant be paid at the clam shell helper's rate until his position is reestablished. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Public Law Board for resolution.

The issue to be decided in this dispute is whether Claimant violated the Agreement by abolishing Claimant's position, and if so, what should the remedy be.

At the outset it should be noted that the Agreement does not specifically require that the duties of shovel helper must be performed by someone in Claimant's job classification. Thus, unless the abolishment of the position was arbitrary, capricious, or an abuse of managerial discretion, Carrier's action must be allowed to stand.

Evidence submitted by the Organization shows that after Claimant's position was abolished, employees in other job classifications performed the duties of helper on Shovel 10142, and that they were usually able to complete those duties in less than one hour per day. The Agreement does not require Carrier to pay any position a full day's pay for work that can be done in less than one hour. Since Carrier has the right to eliminate unnecessary positions, it cannot be held that the abolishment of Claimant's position was arbitrary, capricious, or an abuse of managerial discretion.

The Organization argues that it was improper to assign Claimant's duties to other job classifications because the work had been performed "customarily" by employees in Claimant's classification. However, the Organization offers only bare assertions in support of this argument. Since the burden is on the Organization to prove that the work was wrongly removed from Claimant's job classification, the claim cannot be sustained on those grounds.

Finally, Carrier stated in its submission that after Claimant's position was abolished, he exercised his seniority and was assigned as helper on Truck Crane No. 10122. The assignment became permanent as of August 31, 1981. Claimant suffered no monetary loss.

For the reasons stated above, it is the decision of this Board that the claim must be denied.

AWARD:

Claim denied.

Nicholas Kumar
Neutral Member

A. A. Chabette, Jr.
Carrier Member

Bryce L. Hall
Organization Member

Date: 4/27/84