

SPECIAL BOARD OF ADJUSTMENT No. 541

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement when it abolished thirty (30) positions of Assistant Section Foremen effective December 1, 1964.
2. The incumbents of these referred to Assistant Section Foremen positions who were filling them prior to December 1, 1964, be returned to these positions.
3. Any wage loss suffered or any expenses incurred to employes by reason of this action of the Carrier in violation of Article 2 of the Agreement dated May 28, 1963, be now paid to the employes affected.

FINDINGS:

The controlling question is whether or not Carrier violated the Agreement of May 28, 1963, when it abolished thirty assistant foreman positions on December 1, 1964, on only five days notice.

The May 28, 1963, Agreement provides in Article 1 that no assistant foreman's position will be abolished prior to June 15, 1964, except in four instances, none of which is applicable here. In Article 2, the Agreement prescribes that sixty days advance notice will be furnished when Assistant Foreman positions are to be abolished, except in the aforementioned four instances. Petitioner interprets these provisions as meaning that there is a "freeze" on assistant foreman positions up to June 15, 1964, but that such positions may be abolished after that date on sixty days notice.

Petitioner's interpretation certainly possesses logic and lends support to the claim. The difficulty is with Article 4 which stipulates that no Section 6 notices can be served "during the term of this Agreement." The only term mentioned anywhere is that expiring June 15, 1964, as stated in Article 1.

If Article 1 were not interpreted as establishing a term date, Article 4's reference to "the term of the Agreement" would be meaningless and the parties would be barred permanently from filing a Section 6 notice except by mutual consent. This Board is not disposed to reach so unrealistic and unusual result in the absence of unmistakably clear contract language. We find nothing in the record, including the letters emphasized by the parties when considered together, that calls for a contrary ruling and we will deny the claim.

AWARD: Claim denied.

Dated at New York, N. Y., this 10th day of March, 1965.

/s/ Harold M. Weston
Harold M. Weston, Referee

/s/ Arthur J. Cunningham
ORGANIZATION MEMBER

/s/ R. A. Carroll
CARRIER MEMBER