

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 180
Case No. 267

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
St. Louis, Southwestern Railway Company

STATEMENT
OF CLAIM

"Claim of the System Committee that:

1. Carrier violated the effective agreement when David C. Hartsfield's position as Water Service Foreman was abolished on June 1, 1982, and Water Service Supervisor Arthur Daniels assumed Mr. Hartsfield's duties as the Foreman.
2. Claimant Hartsfield shall now be paid the difference in the rate of pay between that of a Water Service Repairman and that of a Water Service Foreman beginning June 1, 1982, and running concurrently until such time as he is returned to the position of Water Service Foreman."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates without dispute that on June 1, 1982, Carrier abolished the position of Water Service Foreman, which had been occupied by claimant and assigned his duties to Water Service Supervisor Arthur Daniels. The claimant was reduced to a non-supervisory role in the Department, thus triggering the dispute herein.

As an initial position, the Petitioner argues that Carrier did not respond to the original claim properly in accordance with Article XV in that the letter failed to give a reason for the denial of the claim, as required by Section 1(a) of Article XV. The Board notes that although the letter from the Regional Maintenance of Way Manager was brief and hardly elaborated on the reasons for the denial, it met the needs of the rule in that it indicated that Carrier did not violate the agreement and that it felt that there were no schedule rules which afford a basis for the claim.

Since the response technically satisfied the requirements of Article XV, although minimally, the procedural issue raised by Petitioner must be denied.

The Organization argues that there had been a Water Service Foreman at this location since 1959 and claimant had been in that role for some time. The Scope Rule, Article I, as well as Articles II, VI and VIII of the Agreement, are cited in support of Petitioner's position. Section 1 of the Scope Rule is relevant to this dispute and provides as follows:

"Section 1. These rules govern rates of pay, hours of service and working conditions of all employees in the Maintenance of Way and Structures Department (not including supervisory forces above the rank of inspectors) represented by the Brotherhood of Maintenance of Way Employees as follows:.... Water Service Department: Water Service Foreman, Water Service Mechanic, and Service Mechanic Helpers."

In accordance with the Scope Rule, the Organization notes that the position of Water Service Foreman is not excepted from the agreement, whereas supervisory employees are excepted. The Organization notes, further, that it is clearly recognized that foremen have the inherent right to supervise the work of the men under them. In this instance, the work of supervising, laying out the work, keeping time and making out the necessary reports has historically been performed by Water Service Foremen on this Carrier, according to the Organization.

Carrier maintains that due to a decline in Carrier's business and a reduction of forces, the services of the particular Water Service Foreman, Mr. Hartsfield, were no longer required. Further, Carrier notes that water service employees work independently and do not work as a member of a gang under the supervision of the foreman and, hence, they do not require the constant supervision of a foreman. Carrier argues, additionally, that there is no provision in the agreement requiring that Carrier assign a foreman to be present to supervise water service employees. In addition, Carrier insists that the Scope Rule merely lists the Water Service Foreman and does not reserve any work to the exclusion of others, nor are there any rules guaranteeing the position at any location. Carrier maintains that the work of a General Supervisor and a Foreman are

similar in nature and many of the duties each performs are managerial functions, and the work is not reserved exclusively to members of the Organization. In general, according to the Carrier, the Scope Rule is not specific in terms of reserving work exclusively to employees covered by the agreement and the burden is on the Petitioner to prove that the work involved has traditionally and customarily been performed by them on a system-wide basis to the exclusion of all others. This, according to the Carrier, has not been done.

In essence this dispute involves an interpretation of the Scope Rule. The Scope Rule in this case is general in nature and does not, in itself, reserve any work to employees represented by the Organization. It is long settled that classification rules, such as that in this agreement, are not work preservation rules. For Petitioner to prevail in this case, it would be necessary to establish that historically and customarily the work of the Foreman, described by Petitioner, has been performed on a system-wide basis by employees under the agreement to the exclusion of all others (see Fourth Division Award No. 3129, among many others). The Organization has presented no evidence to support the contention that the work in question is indeed exclusively reserved to employees under the agreement.

In a related type of dispute, Fourth Division NRAB Award No. 2110 provided in pertinent part as follows:

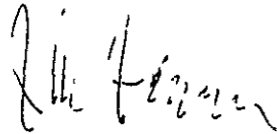
"The Scope Rule does not define nor does it describe the work of foremen and supervisors. These employees do not have the exclusive right under that rule to every supervisory function unless it can be shown by probative evidence that they have such exclusive rights. Petitioner must show historically and customarily all supervisory work was performed exclusively by employees covered by the agreement. There is no such evidence in this record.... Unless otherwise specifically provided in the agreement, Carrier alone has the sole and exclusive right to determine when and under what circumstances a foreman may be assigned to supervise a group of employees. The mere fact that a foreman was once assigned does not establish this as an obligation for all times."

The Board, while recognizing the concern the Organization has for the loss of

a position, finds that the fact of system-wide exclusivity of the particular functions has not been established by Petitioner; thus, since the burden of proof has not been met to establish a violation, the claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member

Carrier Member

Houston, Texas
February , 1984