

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when furloughed Trackman G. L. Scott was not appointed to Apprentice Foreman on District #4.

2. Claimant Scott shall now be paid for all wages lost, beginning October 8, 1984, and continuous thereafter until the violation ceases." (SSW-P-825-Scott; 53-783)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

It is the Organization's contention on behalf of Claimant that when, between the dates of September 15 and October 8, 1984, Carrier appointed four Apprentice Foremen on Maintenance of Way District No. 4, that the Carrier exceeded the total number of Apprentice Foremen permitted on the District in violation of Article 24, Section 5, of the Schedule of Rules Agreement, and, that such action resulted in lost work opportunities for Claimant as the senior furloughed Trackman.

Section 5 of Article 24 reads:

"SECTION 5. Not more than three (3) apprentice foremen will be employed on any district."

As concerns lost work opportunities, the Organization maintains that since an apprentice foreman, in pursuance of Section 9 of Article 24, is a working member of a track gang, in addition to performing any supervisory duties assigned to such position, that Claimant should have been recalled from furlough to work with the track gang as opposed to Carrier's use of apprentice foremen beyond the number specified in the contractual agreement.

Essentially, the Carrier defends its actions by offering statements to the effect that there can be three apprentice foremen on each maintenance of way district under the supervision of a District Manager of Maintenance of Way. In this same regard, the Carrier states:

"On September 11, 1985 (nearly six months after it was agreed that this case would be submitted to Special Board of Adjustment No. 280), an agreement was signed revising Section 5 of Article 24. This agreement is included as Exhibit No. 2. Note that the word 'seniority' was inserted before the word 'district' in this revised agreement and in return the Carrier received the right to add additional apprentice foremen based on the number and size of production gangs. Had Section 5 of Article 24 of the original agreement meant 'seniority district,' it would have so stated and the Organization would not have been willing to make concessions in order to receive this wording in the revised agreement."

The Letter of Agreement, dated September 11, 1985, reads as follows:

"In conference held September 11, 1985, it was agreed that Section 5 of Article 24 will be revised to read as follows:

'Section 5. Not more than 3 apprentice foremen will be employed on any seniority district except additional positions may be added as follows:

One (1) Apprentice foreman may be assigned to an work only with a production gang consisting of 25 or more members.'

Two (2) Apprentice foremen may be assigned to an work only with a production gang consisting of 50 or more members.'

It was further agreed that Section 12 will be deleted in its entirety.

This agreement will become effective on October 1, 1985."

The Carrier further states that without prejudice to its position as set forth above, there is no correlation between the number of apprentice foremen and the fact that Claimant does not have sufficient seniority to work as a trackman.

Maintenance of Way Districts are described within the Schedule of Rules Agreement as follows in Article 2, Section 2(a):

"Note: Seniority rights of employees to new positions and vacancies are restricted to the districts having

boundaries as follows:

District 1 - Territory North of Texarkana (MP 417.53) to Illmo, Mo.

District 2 - Territory South of Texarkana (MP 417.53)

District 3 - Territory Kansas City, Ks. to and including E. St. Louis Yard, Ill.

District 4 - Territory Topeka to Tucumcari."

Accordingly, absent probative evidence to the contrary, it would seem to the Board that when the parties provided in Article 24, Section 5, there would be a restriction with respect to the number of apprentice foremen which could be employed on any district that the intended reference to a district was that contained as set forth above in Article 2, Section 2(a). Thus, we believe it must be held that the original intent of Section 5 of Article 24 was to restrict the number of apprentice foremen to three such positions within the boundaries of each district, and not, as the Carrier would urge, to three such positions under the direct supervision of whatever number of District Managers Carrier would unilaterally determine to employ within each district.

Certainly, recognition was given to the restrictive nature of the rule when the parties found it necessary to enter into the September 11, 1985 Letter Agreement so as to permit an increase in the number of apprentice foremen to be employed on production gangs.

As concerns the Carrier position that insertion of the word "seniority" before the word "district" in revised Section 5 represented a Carrier concession to the Organization in exchange for the right to add additional apprentice foremen based on the number and size of production gangs, the Board finds nothing of record to support such a contention. It would, therefore, seem that use of the word "seniority" merely helped to clarify what appears to have been the original meaning and intent of Section 5 of Article 24.

Under the circumstances of record, the Board will sustain the claim for the period of time between October 8, 1984 and the effective date of the September 11, 1985 Letter Agreement, namely, October 1, 1985. If joint review of the record beyond this latter date finds Carrier to have been in violation of revised Section 5 of Article 24 relative to the number of apprentice foremen assigned to Claimant's seniority district, then that portion of the claim which extends beyond October 1, 1985 is also sustained.

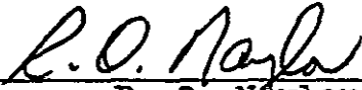
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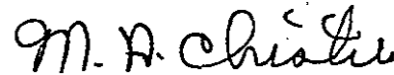
AWARD: Claim sustained as set forth in the above Findings.



Robert E. Peterson, Chairman
and Neutral Member



R. O. Naylor
Carrier Member



M. A. Christie
Organization Member

Houston, TX
August 29, 1986