

SPECIAL BOARD OF ADJUSTMENT NO. 293

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
versus
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM:

Claim that the Carrier violated the agreement when on or about August 16, 1960, it abolished the position of Area Foreman at Newark and failed to fill this position under the effective agreement.

That the senior foreman be reimbursed the equivalent amount of hours he would have earned had he been assigned to this position effective August 16, 1960, and until violation is discontinued.

That a senior laborer under our agreement be reimbursed the equivalent number of hours he would have earned had he been recalled to duty as a result of a Senior Foreman being advanced to the position of Area Foreman at Newark, N.J., from August 16, 1960, and until this violation is discontinued.

OPINION OF BOARD:

Because of existing unfavorable economic conditions the Carrier abolished a number of positions, one of which was that of Area Foreman at Newark (a non-scope position) -- abolished effective August 16, 1960. As a result of this abolishment the incumbent of the position displaced a junior foreman under the scope of the Agreement. The subsequent chain of displacements ended in the furlough of a junior track laborer, who became unemployed. A claim was then filed in behalf of a senior foreman, who allegedly was entitled to be continued as the Area Foreman, and also in behalf of the track laborer who was furloughed as a result of the chain of displacements.

Paragraph 6 of Exhibit No. 14 of the Agreement states in pertinent part: "...the positions of Area Foreman at Vineland and Newark will continue as non-scope assignments until such time as the present incumbents vacate these positions. At that time, these positions will be advertised and awarded as outlined above and rate of pay for these positions will be negotiated between the parties signatory thereto." The contention advanced in support of this claim is that the incumbent of the Area Foreman position at Newark "vacated" this position as a result of the abolishment effective August 16, 1960 and, in accordance with the above-quoted provision, the Carrier was therefore required to advertise and award the position to an employee covered by the Agreement.

Although Appendix A of Exhibit No. 14 lists various guaranteed positions at specified locations, the Area Foreman position at Newark is not so listed. Furthermore, the incumbent of this position did not "vacate" said position effective August 16, 1960. The term "vacate" means "to leave, give up" and it

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is clear that the incumbent of the Newark Area Foreman position did not take such action. His position was voided, with the result that he had no choice but to exercise his seniority to displace in another position or accept a furlough.

Since continuation of the subject Area Foreman position is not guaranteed in Appendix A of Exhibit No. 14, and since the incumbent did not vacate said position, it follows that the claim is without merit.

A W A R D: Claim denied.

/sd/ Lloyd H. Bailer
Lloyd H. Bailer, Neutral Member

/sd/ A. J. Cunningham
A. J. Cunningham, Employee Member

/sd/ C. S. Strang
C. S. Strang, Carrier Member

Jersey City, N. J.
October 13, 1964.