

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company Note to Rule 5 (sic) of the controlling Agreement when they did not use the incumbent of the Piggy Back Track on the holiday of September 6, 1986.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman J. J. Jenkins in the amount of twelve (12) hours at the pro rata rate.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Carrier operates and maintains a train yard and repair facility at Houston, Texas known as Settegast. A Piggy Back Track constitutes part of the operations at the Settegast facility. On the date of the instant claim, the Claimant held a first shift Carman's assignment bulletined to work at the Piggy Back Track.

On September 6, 1982, Labor Day, the Claimant was advised that he would not work on this holiday. Carmen Johnson and Reed were scheduled to work on the first shift at Settegast Yard. Due to the holiday, several regularly scheduled trains were annulled, thereby diminishing the work that had been anticipated for Carmen Johnson and Reed. As a result, the Supervisor on duty assigned Carmen Johnson and Reed to work the cars on the Piggy Back Track which were scheduled to depart that evening on the HDZ train. The assignment of Carmen Johnson and Reed prompted the instant claim to be filed.

The Organization contends that by assigning Carmen Johnson and Reed to work the cars on the Piggy Back Track on Labor Day, the Carrier violated the Note to Rule 5 which, in relevant part, provides as follows:

"Men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the holiday had not occurred and will protect the work."

Under the Note to Rule 5, it is claimed by the Organization that as the assigned Carman to the Carrier's Piggy Back Track, the Claimant is the incumbent of the job and is the only employee who would have worked the job had the holiday not occurred.

After carefully examining the record, the Board concludes that the instant claim should be denied. The assignment of the Piggy Back Track job to the Claimant does not mean that he has rights to all work at the Piggy Back Track to the exclusion of train yard Carmen. In fact, train yard Carmen such as Johnson and Reed have regularly and routinely worked at the Piggy Back Track inspecting and repairing cars, particularly those cars associated with Train HDZ. There is no job bulletined to work at the Piggy Back Track, and partly in the Settegast train yard. However, Carmen from the train yard are often sent to the Piggy Back yard to inspect and repair cars. Since the Claimant's job is not bulletined to work in the train yard and train yard jobs [e.g. Carmen] perform work at the Piggy Back Track, the work that was performed was within the job duties of a Carman rather than the job of the Claimant.

It is true that Train HDZ departs on the second shift. Under normal circumstances much of the work associated with this train is performed on the second shift by train yard Carmen. On September 6, the Supervisor assigned Johnson and Reed on the first shift to inspect and prepare the HDZ cars for a timely departure on the second shift. Accordingly, they performed the work that second shift train yard Carmen have customarily performed in the past. Furthermore, the Claimant's primary responsibility, namely, the maintenance of Piggy Back stanchions were not performed on September 6, 1982. It should also be noted that ordinarily two (2) Carmen perform the outbound air brake inspection on the loaded cars; the Claimant has never given an air brake test to Train HDZ.

Based on the record, the Claimant's job was not filled by Carmen Johnson and Reed on September 6, 1982, Labor Day. They performed the work of train yard Carmen on that day. Accordingly, the instant case is unlike Second Division Award No. 8094 which is referred to by the Organization in support of its position. In Award No. 8094 a Truck Driver installed plates on two (2) cars at the Piggy Back Track at the Settegast facility on Good Friday, a holiday. Apparently the work in question was work which would have been ordinarily performed by the Claimant. In this case, the work performed by Carmen Johnson and Reed on September 6, 1982 would not have been performed by the Claimant. The Board concludes that the Carrier did not violate the Note to Rule 5, and thus, the instant claim should be denied.

Form 1
Page 3

Award No. 10770
Docket No. 10454
2-MP-CM-'86

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 5th day of March 1986.