

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

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

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement Rules 12 and 31 when they forced N. Ibarra and L. Muse to have to travel fifty (50) miles to perform their duties for the railroad, this being brought about by the Missouri Pacific Railroad Company forcing Carman N. Ibarra to have to travel to Harlingen, Texas, some fifty (50) miles from his home point.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen N. Ibarra and L. Muse twenty-five cents (25¢) per mile for fifty (50) miles each day that they worked starting February 6, 1984, until the violation is corrected. That Carmen N. Ibarra and L. Muse be allowed \$4.95 per day for meals they were forced to take away from their home point. Carmen Ibarra and Muse be allowed the punitive rate for pay for each date worked in Harlingen, Texas, starting February 6, 1984, continuing until violation is corrected. That Carmen Ibarra and Muse be compensated for all overtime lost at their home point.

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 an interchange at Brownsville, Texas with the NdeM Railroad of Mexico. During November of 1983, one of the Claimants, N. Ibarra, was given a 90-day actual suspension for failure to properly perform his duties while inspecting cars in Mexico. During February of 1984, the Master Mechanic for the Mexican Railroad informed the Missouri Pacific that they did not want Mr. Ibarra to continue inspecting cars on their property. As a result, Claimant Ibarra displaced the other Claimant in this case, L. Muse, at the Carrier's Harlingen, Texas location. Both Claimants must travel approximately 50 miles per day in order to fill their new positions.

The Organization argues that Claimant Ibarra does not work for the Mexican Railroad, he works for the Missouri Pacific; and Rule 12 and Rule 31 state that, during temporary vacancies or after disciplinary action, an Employee shall then be returned to his former position. Since the Claimant was not given the right to return, this is further discipline and requires an Investigation. The Claimant is entitled to a Hearing. If the Carrier wanted the Claimant not to go to Mexico, it should have been included in the original disciplinary action. The Claimant did not agree to disqualification.

The Carrier argues this is beyond its control. This is not a disciplinary action but a disqualification because of the position taken by the Mexican Railroad. With respect to Claimant Muse, the other actions that were taken as a result of the disqualification were in accordance with the Agreement; and no Rule cited would support mileage or meal pay under these circumstances.

Upon complete review of the evidence, the Board finds that this situation occurred due to the admitted failure of Claimant Ibarra to properly perform his duties. The fact that the Mexican Railroad will not allow Claimant Ibarra on their property is beyond the control of the Carrier. The determination that the Claimant was not able to continue in his former position was not shown to be arbitrary and capricious; nor is it a disciplinary action in the normal sense of that term. With respect to the Claims for mileage and meal allowance, there was no showing in the record that any Rule would support this Claim on the part of the Organization. With respect to Claimant Muse, he is the unfortunate victim of this set of circumstances; however, it appears that the subsequent chain reaction was handled in accordance with the Controlling Agreement. In addition, both Claimants have been fully employed, no evidence was produced showing the loss of overtime or pay, therefore, the Claim will be denied in its entirety.

A W A R D

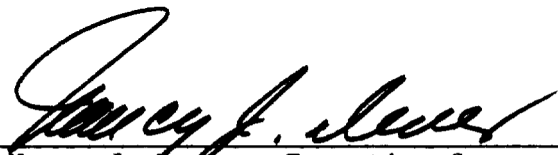
Claim denied.

Form 1
Page 3

Award No. 10998
Docket No. 11009
2-MP-CM-'86

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois this 17th day of September 1986.