

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-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That in accord with Rule 13 of DP 315, the Missouri-Kansas-Texas Railroad Company be required to bulletin a job that will work vacation relief in the yard at Parsons, Kansas.

2. That in accord with Rule 3, paragraph a, the Missouri-Kansas-Texas Railroad Company be required to pay Carman P. E. Long four (4) hours pay at the proper pro rata for service outside his bulletined hours for the dates of January 5, 6, 7, 11, 12, 13, 14, 18, 19, 20, 21, 25, 26, 27 and 28, 1984. This is in addition to the monies already received by Carman Long.

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 employes involved in this dispute are respectively carrier and employes 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 Claimant is a Journeyman Carman in service with the Carrier at the Carrier's Carson, Kansas facility. The Claimant is regularly assigned to the repair track in the facility and for the period January 3, 1984 to January 28, 1984 the Claimant was required to perform the duties, rest days, and hours of service of another Carman who was on vacation during that period. The Claimant performed these duties and, subsequently, grieved the matter.

The Organization claimed a violation of Rules 3 and 13. Rule 3 states in pertinent part:

"Overtime and Rest Days, Holiday Service

(a) All service performed outside of bulletin hours will be paid for at the rate of time and one-half until relieved as otherwise provided in this agreement..."

Rule 13 states:

"Bulletin Positions

When new jobs are created or vacancies occur in the respective crafts, the oldest employees in point of service shall, if sufficient ability is shown by trial (seven (7) working days to be considered sufficient trial), be given preference in filling such new jobs or any vacancies that may be desirable to them. All permanent vacancies or new jobs created will be bulletined. Bulletins must be posted five (5) days before vacancies are filled permanently. Employees desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the local chairman.

NOTE: Temporary vacancies of fifteen (15) days or more will be bulletined. Employees filling such temporary vacancies will be returned to their former positions at the expiration of temporary positions."

The Organization further stated that no vacation relief jobs were bulletined as of September 20, 1982 in violations of Rules 13, 23 and 3(a). The Organization argued the Claimant should not be required to work vacation relief. Rule 3 requires time and one-half pay for service outside of bulletined hours. The Carrier did not try to bargain any changes in the Agreement. The Carrier had a vacation relief position for 12 years and bulletin positions do not have to be full-time positions. There is no extra cost to the Carrier, and the Organization noted this is not an issue of shift change but vacation relief. The Organization stated the Carrier must re-bulletin the position in accordance with the seniority provisions.

The Carrier stated the Claimant is the junior employee. The Carrier argued it has a long-standing practice of assigning junior employees to fill in for vacation where vacation relief is required. This is not a regular assignment; it is a vacation relief situation. The Carrier stated the Claimant was not working outside of his hours while on relief, therefore,

there was no Rule 3 violation. The Carrier contended the Organization has no rule on which to base their Claim and, because they have the above noted practice of using the junior individual, the Carrier had the right to proceed in this manner. The Carrier claimed the Organization wanted, by use of vacation relief positions, to increase the work force and, therefore, the costs of the Carrier on a systemwide basis.

Upon complete review of the evidence, the Board finds that, with respect to Claim #1, Rule 13 of the Controlling Agreement does not require the bulletining of this particular position. In addition, the Carrier had a practice of assigning the junior employee to fill in for vacations as needed. It is unrefuted that the Carrier, for a number of years, had vacation relief positions; and it is within the Carrier's rights to abolish such positions. This was not grieved in 1982 when the abolishment occurred, nor is there any record of any grievances in 1983. Therefore, the Board will deny Point #1 of the Claim in its entirety. With respect to Point #2, Rule 3, Section (a) does require service performed outside of bulletin hours be paid for at the rate of time and one-half until relieved. However, the Board finds that for the period of time covered by this incident the Claimant's regular hours were those of Carman, D. P. Matthews, and not his own regular hours. The Board cannot find any rule nor has the Organization supplied any proof that under the circumstances of this case Rule 3, Section (a) would be applicable. None of the Rules cited require the action that is desired by the Organization, therefore, Part 2 of the Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1987.