

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11400
Docket No. 11033
88-2-85-2-162

The Second Division consisted of the regular members and in addition Referee George S. Roukis 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 agreement of December 16, 1970, Rule 24 and Rule 25 of the Controlling Agreement when they used Carmen from Van Buren, Arkansas, to rewheel Freight Car MPX 15021 at Vain, Oklahoma, February 13, 1984.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen J. L. McKee and F. G. Goins in the amount of eight (8) hours each at the punitive 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 employee 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.

In this dispute, which is a companion case to Second Division Award 11399, the Organization charges that Carrier violated the December 16, 1970, Agreement and Rules 24 and 25 of the controlling Agreement, when Carmen from Van Buren, Arkansas were used to rewheel Freight Car MPX 15021 at Vain, Oklahoma on February 13, 1984. It is the Organization's position that the December 16, 1970, Agreement specifically restricts such work to Carmen employed at Coffeyville and Muskogee and consequently, Carmen employed at other points on either the Missouri Pacific or Texas and Pacific Railroads were not entitled to this work. In effect, the Organization asserts that Claimants had exclusive right to rewheel the freight car at Vain, Oklahoma.

In rebuttal, Carrier maintains that the Organization has not demonstrated the applicability of Rules 24 and 25 to this disputed work situation and more pointedly, the December 16, 1970, Agreement is now moot, since the September 16, 1981, Agreement between the aforesaid railroads and the Brotherhood of Railway Carmen cancelled the labor contract on the former Texas and Pacific Railroad and placed all Carmen under the effective coverage of the Missouri Pacific's Agreement. It observes that the two railroads had become one and the Missouri Pacific Agreement then applied to the Consolidated Rail System.

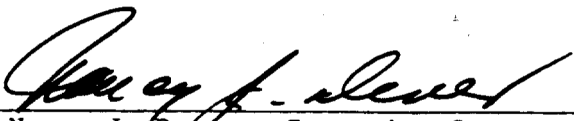
In considering this case, we concur with Carrier's position. As we pointed out in Second Division Award 11399, the 1981 systemwide Agreement superseded all prior Agreements on the Texas and Pacific and the seniority provisions on the Missouri Pacific were uniformly applicable to all Carmen on the Consolidated property. Moreover, from an important operational perspective, it would indeed be impractical, if in the absence of clear contrary language, the systemwide Missouri Pacific Agreement was qualified or restricted by prior Agreements coordinating Carmen's work on two separate rail properties. We believe that the manifest intent of the 1981 Agreement was to provide systematic uniformly Agreement Rule application and enforcement. This is further evident by Sections 2 and 3 of the 1981 Agreement, which nullified all understandings, Interpretations and Agreements previously in effect on the former Texas and Pacific Railroad.

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 6th day of January 1988.