

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

(Brotherhood Railway Carmen/Division of TCU

PARTIES TO DISPUTE: (

(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling Agreement, Rules 16, 44 and specifically, the Memorandum of Understanding dated August 23, 1979, by not properly and timely notifying Carman J. B. Smith that he had been displaced by a senior carman from the temporary position he was holding, and that he was to return to his regular permanent position, resulting in the loss of sixteen (16) hours pay for Carman J. B. Smith.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to additionally compensate Carman J. B. Smith in the amount of sixteen (16) hours at the applicable hourly rate of pay.

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.

The basic facts of this case are set forth as follows: On Tuesday, January 5, 1988, Claimant was notified via telephone that he was the successful bidder on temporary Position No. 9283. The hours of this position were 3:30 P.M. to 11:30 P.M. with rest days of Thursday and Friday. He reported to said position on Wednesday, January 6, 1988, and worked the full tour. He observed Thursday and Friday, January 7 and 8, 1988, respectively as rest days. When Claimant returned to work on Saturday, January 9, 1988, he was informed that another carman displaced him off temporary Position No. 9283 and also further advised that he would return to his permanent Position No. 9221.

It was his position that since Carrier was aware of the displacement action on January 6, 1988, it was obligated to inform him of such change on this date in order to allow him to work on January 7 and 8, 1988. Thursday and Friday were not rest days for Position No. 9221. He charged that Carrier violated Rules 16 and 44 of the controlling Agreement and the August 23, 1979 Memorandum of Understanding.

In response, Carrier contended that the other carman was bumped on January 7, 1988, and accordingly could not be apprised of his displacement option until January 7, 1988. Consequently, contrary to Claimant's assertion that he should have been notified on January 6, 1988, of the prospective displacement action. It argues that it was not aware of the personnel changes on January 6, 1988. It also notes that it tried to contact Claimant several times via telephone on January 7 and 8, 1988, of the displacement action, but without success. Moreover, as to Claimant's assertions that Agreement Rules 16, 44 and the August 23, 1979 Memorandum of Understanding were violated, it maintains that Claimant never showed how said Rules were, in fact, violated.

In considering this dispute, the Board is convinced that Carrier was not aware of the prospective displacement actions on January 6, 1988, and thus could not have informed Claimant of these changes on that date. However, since Claimant could have worked on Position No. 9221 on at least Friday, January 8, 1988, he is entitled to be made whole for the de facto loss. Since he was effectively displaced from Position No. 9283 on January 7, 1988, practically and consistent with observable practice at Argentine, Kansas, he could have returned to Position No. 9221 on January 8, 1988.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of November 1990.