

Award No. 2971

Docket No. 2429

2-MP-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the carrier improperly assigned other than Carmen to making pallets (skid boxes) for use in the DeSoto, Missouri Car Shop, during the months of April, May, June, July and August, 1955.

2. That accordingly, the carrier be ordered to additionally compensate Carmen C. W. Woodard and Robert Coleman, eight (8) hours each at the straight time rate for September 1, 1955, and for sixty (60) days prior thereto.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

The question here is whether carmen or Maintenance of Way Employes are entitled to the work involved in this dispute.

The said work was assigned to Maintenance of Way Employes by the carrier. The Carmen claimed that they were entitled to the said work.

The Brotherhood of Maintenance of Way Employes were not given notice of the hearing in this matter in accordance with Section 3 First (j) of the Railway Labor Act.

Before the merits of a dispute are decided, all parties "involved" should be given notice of the dispute and an opportunity to be heard.

An employe or organization should not be deprived of any of his or its rights or property without a proper notice first being given and a fair hearing accorded to them if they desire to be heard. Certainly all employes and organizations must agree with that statement if they desire to protect their own rights and property.

The Brotherhood of Maintenance of Way Employes were and are involved in this dispute and therefore should receive notice in accordance with Section 3 First (j) of The Railway Labor Act.

What was said in our Award 2970 is adopted here.

AWARD

Consideration of and decision on the merits herein is deferred pending due notice by this Division to the organization of Brotherhood of Maintenance of Way Employes to appear and be represented in this dispute in accordance with Section 3 First (j) of The Railway Labor Act.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1958.

LABOR MEMBERS' DISSENT TO AWARD 2971

The majority's refusal to decide these cases on the merits renders the Division vulnerable to the stalemating of any case simply on the suggestion of a carrier that a third party is involved. The erroneousness of the majority's holding that consideration and decision on the merits should be deferred pending due notice by the Division to the Brotherhood of Maintenance of Way Employes is readily apparent since the statutory jurisdiction of the Second Division does not include such employes nor does the governing agreement include said employes.

The majority should have adhered to the rulings of Second Division Awards 340, 1359, 1628, 2315, 2316, 2359 and 2372 and awards of other Divisions, such as Award 8079 of the Third Division, that notice to third parties is not required where the employes' rights, if any, are not controlled by the agreement of the claimant organization or where the employes are members of a craft whose disputes are referable to other Divisions of the Board and over which the Second Division would have no jurisdiction.

/s/ R. W. Blake

/s/ C. E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner

/s/ J. B. Zink