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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6577
Docket No. 6411
2-MP-CM-'73

The Second Division consisted of the regular members and in addition Referee Edmund W. Schedler when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the Agreement of November 21, 1964, when they deprived Painter P. A. Tamborello,, Houston, Texas, the right to work his regular assignment on Wednesday, April 14, 1971.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Painter Tamborello in the amount of eight hours (8') at punitive rate for April 14, 1971, and in addition to the money amount claimed herein, the Carrier shall pay Claimant an additional amount of 6% per annum compounded annually on the anniversary date of the claim.

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 employee 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.

This dispute involves the question of who is to fill a vacancy, if the vacancy is to be filled, when an employee has contractual right to take a holiday on his birthday. The evidence disclosed the Claimant had a holiday on his birthday, April 14, 1971. The evidence also disclosed that Laborer J. Wilson was told by his Foreman shortly after 7 AM on April 14, 1971 to report to the paint shop and work with Painter A. DeLeon because the Claimant was off on his birthday.

The Organization cited Article 11, Section 6 (g) of the Agreement of November 21, 1964, to wit:

"(g) Existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on holidays shall apply on his birthday."

and the Note to Rule 5:

"Note: Notice will be posted five (5) days preceding a holiday listing the names of the employees assigned to work on the holiday. Men will be assigned from the men on each shift who would have the day on which the holiday falls as a day of their assignment if the holiday had not occurred and will protect the work. Local Committee will be advised of the number of men required and will furnish names of the men to be assigned but in event of failure to furnish sufficient employees to complete the requirements, the junior men on each shift will be assigned beginning with the junior man."

The Carrier contended the claim was procedurally incorrect because the claim was not processed in the usual manner on the property. The Carrier's submission disclosed that a simplified procedure had been agreed to for handling numerous birthday claims. However, the Carrier distinguished between the instant claim where a laborer replaced a mechanic and other claims where a mechanic replaced a mechanic. This Board does not agree that there is a material difference in the two types of disputes. The gravamen of the instant dispute, as it was in the mechanic replacing mechanic disputes, was who was the proper employee to replace the mechanic and not, as the Carrier contended, what employee replaced the mechanic.

Certainly this Board will agree that facts may be distinguishable in vacancy grievances; however in the instant grievance the question is, under the provisions of the Agreement, who was the proper employee to fill the holiday vacancy on April 14, 1971. The Carrier's claim that the instant grievance was procedurally incorrect is denied.

On the merits of this dispute the Carrier contended Laborer Wilson did not perform any painting which is included in the classification of work rule. The evidence disclosed Wilson sand blasted an engine. Rule 118 relating to the classification of work for carmen helpers says, inter alia:

"Rule 118. Employees regularly assigned to help carmen and apprentices, employees engaged in washing and scrubbing the inside and outside of passenger coaches preparatory to painting, operators of sand blasting machines, removing of paint on other than passenger cars preparatory to painting, ... and all other work generally recognized as carmen helper's work, shall be classed as helpers."

In the opinion of this Board the work of sand blasting flowed to the mechanics rather than laborers because mechanics can do all the work helpers do but laborers can not. The Carrier never, in their submission, overcame or refuted Laborer Wilson's statement that he had never worked in the paint shop before or after the date in question since there are no laborers working in the paint shop.

The Organization has made a claim for interest at the rate of 6% per annum compounded annually. Interest is not earned on a claim until after a determination has been made of the claim; therefore interest is denied.

A W A R D

Claim is sustained, but interest is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of October, 1973.