

The Second Division consisted of the regular members and in addition Referee M. D. Lyden when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers  
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the procedural provisions of Rule 31 (a) of the June 1, 1960 controlling agreement by failing to decline the Local Chairman's claim timely filed February 23, 1978.
2. That the Missouri Pacific Railroad Company violated Section 2 of the Memorandum Agreement signed May 26, 1973, to be effective April 1, 1973, at Kansas City, Missouri when they did not revert temporarily upgraded Electrician Apprentice S. D. Vanderlinden to his apprentice status in reverse order when force reduction at Kansas City, Missouri was made to be effective end of shift January 2, 1978, further violating Article III - Advance Notice Requirements - of the National Agreement June 5, 1962 when the demoted electrician apprentice was not given five (5) working days advance notice of being furloughed as electrician apprentice.
3. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician Apprentice S. D. Vanderlinden eight hours (8') a day, five days a week at the effective rate from January 3, 1978 and continuous.

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.

Parties to said dispute waived right of appearance at hearing thereon.

Evidence does not exist to justify that the Missouri Pacific Railroad Company violated the procedural provisions of Rule 31 (a) June 1, 1960 controlling agreement by failing to decline the Local Chairman's claim. The Master Mechanic denied the claim on March 20, 1978. Mail properly addressed and placed in the usual location for pickup and delivery is constructive delivery of the letter.

The Organization concedes that the notice of furlough as an electrician is in accordance with the agreement. It maintains, however, that they were not properly furloughed as apprentices.

The Carrier takes the position that notice was unnecessary in view of the fact that there were only four apprentice positions available and all four were abolished in the notice. It is obvious that the claimant could not bump into a position which did not exist and no furlough notice was necessary. On the other hand, if seven apprentice positions existed as claimed by the organization, then a demotion in accordance with the agreement was necessary and appropriate handling from that position was required.

Based upon the record determinant in Award 8277, it was stated, "The record does not contain sufficient information for the Board to make a determination regarding the number of positions available. It should be simple for the parties themselves to make this factual determination and we return that finding of fact to them."

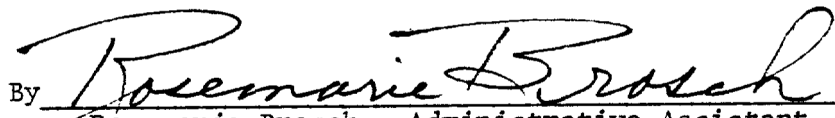
Award 8277 was dated, March 19, 1980. At this time the number has been established in fact, therefore the Board awards as follows.

A W A R D

Based on the entire record, if the factual determination of the number of jobs available reveals sufficient positions to accommodate the demotion of the Claimant to an apprentice position, he will be awarded five (5) days in accordance with the notice provisions of the National Agreement. If the number of apprentice positions available were nonexistent, the claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of June, 1981.