

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Missouri Pacific Railroad Company

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated Rule 10 of the controlling Agreement and Memorandum Agreement Decision No. SC 69 of November 27, 1940 when they arbitrarily transferred Carman J. O. Kirkwood from the first shift to the second shift March 12, 1980 at Palestine, Texas.
2. That the Missouri Pacific Railroad Company violated the time limits of Rule 31 of the controlling Agreement when they failed to respond timely to letter of appeal of claim of September 23, 1980. Carrier's letter declining claim was not received until sixty-two (62) days following date of appeal.
3. That the Missouri Pacific Railroad Company be ordered to compensate Carman J. O. Kirkwood in the amount of eight (8) hours at the punitive rate for their violation.

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 employes 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.

Claimant's regular assignment at the Carrier's Palestine, Texas shop was abolished on March 6, 1980. Instead of laying him off, the Carrier permitted Claimant to continue working on an unassigned basis on the first shift until a vacancy became available. On March 12, 1980, a vacancy occurred on the second shift. The Shop Superintendent and the Local Chairman orally agreed that Claimant could fill the second shift vacancy until the assignment was permanently awarded to a successful bidder. Claimant was notified, on March 12, 1980, that beginning the next day he should protect the second shift vacancy in lieu of working on the first shift. Claimant seeks eight hours of pay at the overtime rate for the Carrier's alleged violation of Rule 10.

At the onset, the Organization argues that the Director of Labor Relations failed to timely deny the General Chairman's appeal dated September 23, 1980. However, the record discloses that the Organization received the Director's response on November 24, 1980. Since the denial was received sixty-one days after the appeal was filed the Carrier must have mailed its response within the sixty day limitation period set forth in Rule 31.

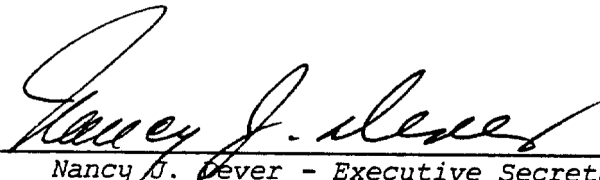
The Carrier gratuitously allowed Claimant to perform miscellaneous work on the first shift on the condition that he would fill a position when one became available. Both parties reaped benefits from the arrangement. Claimant avoided a furlough and the Carrier had a good worker to perform ad hoc duties. When the second shift vacancy occurred, Claimant was directed to fill the vacancy pursuant to the prior understanding. Though Claimant was not expressly exercising his seniority rights to fill the position on March 12, 1980, Claimant received tangible benefits as a result of the shift change. He could be assured, at least for awhile, of steady work. On the first shift, Claimant was precariously close to being furloughed. In essence, Claimant's change of shift was a voluntary switch for the mutual benefit of both parties. Thus, Rule 10 was inapplicable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December, 1983