

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

Parties to Dispute: ( Brotherhood Railway Carmen of the United States  
( and Canada  
(  
( Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 3, 12 and 24 of the controlling Agreement when they arbitrarily and without rule support moved Carman D. E. Evans from his regular assigned position and used him to fill vacancy created by rearrangement of forces at Poplar Bluff, Missouri, October 21, 1982.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman D. E. Evans for four (4) hours at the pro rata rate for his being forced off his regular assignment for October 23, 1982, eight (8) hours at the pro rata rate for October 24, 25 and 26, 1982, for the same reason.

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 employees 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.

This claim involves an allegedly improper assignment of an employee. Claimant Carman D. E. Evans held a regular vacation relief position with the Carrier in October, 1982 when this dispute arose. Another Carman, S. Gibson, bid into a new position, leaving his former position vacant. The Carrier then assigned Claimant Evans to the position vacated by Gibson beginning with the second shift on October 21, 1982 and continuing through October 27. Because of this change in assignment the Claimant worked second shift instead of his usual first shift assignment. Claimant also worked on Saturday and Sunday, his normal days off, although he received Monday and Tuesday off. The Organization argues that it was improper to assign Evans to a vacancy created by something other than a vacation. The Carrier responds that this use of vacation relief men has been permitted historically on this property and was specifically approved in this instance by the Organization. The Organization generally denies both contentions.

The Organization relies upon several provisions of the applicable agreement to support its position. Rule 12 requires vacancies to be bulletined and then given to the most senior employee, if sufficient ability is shown by fair trial. Rule 24 defines seniority. The Organization construes these two rules together with the Claimant's job description as a vacation relief man to mean that he had sufficient seniority to refuse to work in this temporary vacancy because it was created by something other than a vacation. The Board does not agree.

The Organization asserts that the Carrier violated the agreement in part because this vacancy was never bulletined, as required by Rule 12. Even if the Board were to read Rule 12 as requiring that the Carrier cannot fill a vacancy, even temporarily, without bulletining it, it is still not clear that Claimant is a proper party to bring a claim. A proper Claimant might have been an employee who would have bid on the job, had it been bulletined. Or perhaps the employee who eventually filled this job could bring a claim for the days worked by the Claimant in this case, arguing that the position should have been filled by bulletining as soon as it became vacant.

The instant Claimant does not fall into either of these categories, however, and it is difficult to see how the Claimant has been injured by the Carrier's action. He worked the same number of days he was originally assigned to work, so he suffered no loss of pay. Furthermore, the Board does not believe Rule 12 was intended to address the situation where a temporary vacancy occurs while the job is being filled permanently. Nothing in Rules 12, 24 or in the Claimant's job description specifically prohibits the Carrier from using him to fill a temporary vacancy created by some reason other than a vacation. In the absence of limiting language the Carrier may employ its normal authority to assign employees to vacant positions.

Similarly, Rule 3 does not apply in this case. That Rule mandates overtime payment for employees required to work on their rest days. When the Claimant was assigned to the temporary vacancy his rest days were changed from Saturday/Sunday to Monday/Tuesday. There is no dispute that he received these rest days. If the Claimant worked more than five days in a row or forty hours in a week without receiving a day off he may be entitled to overtime pay under another provision of the Agreement or under another labor act. That is not the basis of this claim, however, and the Organization has not provided the Board with enough information to determine whether this is the case.

Even if the language cited by the Organization were interpreted as a limitation upon the Carrier's right to assign the Claimant to this vacancy, other obstacles prevent the Board from granting the claims. First, the Carrier has contended all along that past practice on the property has been to use vacation relief men to "ride bulletins". The Organization generally denied this statement, but neither party has produced any further evidence on the point.

Second, the Carrier alleges that the temporary transfer of the Claimant was approved by the Organization. The Organization at first contended that Daniels "was not provided all of the facts relating to this dispute when he was approached by said foreman." Later, however, the Organization stated that the move was not cleared through his office at all. The Organization has not addressed the apparent inconsistency between these two positions.

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2-MP-CM-'86

Because there is insufficient evidence in the record to allow for the determination of this essential issue of fact, the Board must dismiss the claim because the Organization has failed to carry its burden of proof. (Second Division Awards Nos. 9094 and 7051).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1986.

