

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

(Brotherhood Railway Carmen of the United States  
( and Canada

Parties to Dispute: (

(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 5 and its Note July 5, 1982 when they worked other than the incumbent on his job on the Holiday.
2. That the Missouri Pacific Railroad Company be ordered to compensated (sic) Carman W. A. Dickerman in the amount of eight (8) hours at the overtime rate, the pro rata rate for the Holidays.

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 employees 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.

The Claimant, Carman W. A. Dickerman, is employed as a Car Inspector in the Carrier's St. Louis, Missouri, Train Yards. His bid position was that of Lead Carman, 7:00 A.M. to 3:00 P.M., Monday through Friday. On July 5, 1982, a Holiday, the Carrier blanked all Carmen and Car Inspector positions. Subsequently, the Carrier called Carman D. Chiaka to work on July 5, 1982. Chiaka's bid position was the Lesperance Street Yard as Car Inspector, 7:00 A.M. to 3:00 P.M., Saturday through Wednesday. In the course of his duties, he drove a truck.

The Organization claims the vehicle in question is assigned only to Carmen having a chauffeur's license and holding Lead Carmen positions in the St. Louis Train Yard. It is the Organization's position that the Carrier called Carman Chiaka from the Overtime Board to fill the Claimant's position on July 5, 1982, for maneuvers regularly performed by the Claimant.

The Carrier argues that Carman Chiaka was called as the senior Carman who would have worked in the Lesperance Street Yard if the day had not been a Holiday. In the on-the-property handling, the Carrier informed the Organization that Chiaka "merely used the vehicle as a means of transportation." The Carrier argues that the driving of a vehicle does not control entirely who works or does not work a holiday. Referring to the Organization's claim Chiaka performed work normally performed by the Claimant, the Carrier, on January 17, 1983, stated that no rule or practice gives the Claimant the exclusive right to operate a Carrier vehicle. If the reference is to some duties other than driving, the Carrier contended the Organization has not produced such evidence.

The Overtime Rule, which covers the calling of Carman to work on holidays, is contained in Note to Rule 5 and reads as follows:

"Notice will be posted five (5) days preceding a holiday listing the names of 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."

In Award 7993, the Carrier, as in this case, argued that a truck may be used just as any other piece of equipment or craft tools and does not "belong" to the regularly assigned employee. The Board did not disagree with that concept, but went on to note the truck was used not only for transportation, but the full range of its equipment was employed in various rerailling operations.

This is the essential area of dispute in the present case. What was the truck used for? It is not sufficient to simply assert that when Carman Chiaka used the vehicle, he was not performing a duty he would have normally performed on his assignment had the Holiday not occurred. This Board agrees with the Carrier that the claim is based on an asserted rule violation and not evidence. The Carrier pointed out Chiaka used the truck for personal transportation. Chiaka normally used a hydraulic cart in the Yard. The Organization did not satisfactorily rebut the statement Chiaka never left the Lesperance Yard nor did he use any public streets. It is undisputed that the Claimant's bid assignment requires him to start at Lesperance, but also requires work throughout the St. Louis Train Yards of which Lesperance is but a part.

This Board must hold this Claim is deficient because it lacks substantial evidence supporting its basic contention.

Form 1  
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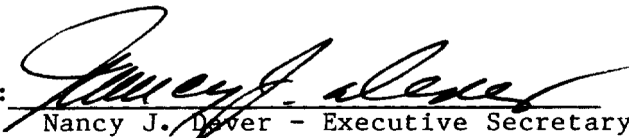
Award No. 10827  
Docket No. 10412  
2-MP-CM-'86

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 16th day of April 1986.