

The Second Division consisted of the regular members and in addition Referee Hyman Cohen 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 Agreement on operating trucks in the car department to Carmen. That February 29, 1983 General Car Foreman T. Duncan took over driving duties from Carman B. Greaff and was involved in a serious accident.

2. That the Carrier be ordered to enforce written agreement assigning carmen to drive truck in service of the Car Department.

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 Carrier operates a Train Yard and repair facility at Houston, Texas.

There is very little dispute between the parties over the facts giving rise to the instant Claim. On February 9, 1983, General Car Foreman T. Duncan and Carman B. Greaff were involved in a serious accident while riding in a pickup truck for the purpose of going to a derailment. Car Foreman Duncan was driving the pickup truck.

On February 11, 1983, Car Foreman R. T. Wyatt and Carman F. Gallegas were sent on a road trip to a derailment. At the time Car Foreman Wyatt was driving the pickup truck.

The Organization claims that by having Car Foremen Duncan and Wyatt drive pickup trucks, the Carrier violated the Agreement "on operating trucks * * * to carmen" and "that the Carrier be ordered to enforce (the) written agreement assigning carmen to drive truck in the service of the Car Department."

In part, the Organization claims that the Carrier violated the Agreement because Car Foremen Duncan and Wyatt drove a pickup truck on the dates in question. The Organization has failed to demonstrate that the Scope Rule or past practice entitles Carmen to the exclusive right to drive Carrier trucks. No such duties are reserved exclusively to Carmen in Rule 102 (Scope Rule). Furthermore, there is no evidentiary support that driving Carrier trucks has historically been performed by Carmen.

In support of its position, the Organization relies on a Local Agreement. Without passing judgment on whether the Local Agreement is binding on the parties, its terms do not establish that truck driving constitutes Carman's work. The terms of the Agreement refers to such matters as the establishment of a truck driver Overtime Board, the monthly rotation of truck drivers based on seniority, the manner in which a person can be placed on the truck drivers' Overtime Board and the requirement that a truck driver "must have a commercial license or chauffeur's license." These terms indicate that the parties who were signatories to the Local Agreement had no intention to establish that the Carmen had exclusive rights to truck driving duties.

Finally, it should be noted that in its Statement of Claim the Organization requests, "That the Carrier be ordered to enforce written agreement assigning carmen to drive truck in service of the Car Department." Thus, the Organization seeks, in effect, a declaratory judgment that the Carrier violated the Agreement and a mandatory injunction that it cease to violate the Agreement in the future. It is well established that this Board has no authority to issue a declaratory judgment or to grant injunctive relief. Second Division Awards 6746, 6160 and 10708. Accordingly, the Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of August 1986.