

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

Parties to Dispute: (Daniel G. Robertson, Jr.
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 20, when they failed to recall Machinist Daniel G. Robertson, Jr. to service on September 7, 1983, in line with his seniority.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist Daniel G. Robertson, Jr. beginning September 7, 1983, and continuing for each work day, including overtime he might have earned, plus 14% interest, until returned to service.

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.

The Organization contends the Carrier violated the Agreement when it failed to recall the Claimant on September 7, 1983. Rule 20 deals with the restoration of forces in seniority order. The Carrier, in responding to the initial Claim, explained that in order to receive consideration under Rule 20, an individual must be in a furloughed status. According to the Carrier, the Claimant submitted his written resignation on March 2, 1983. The Claimant contends that he executed the resignation in the offices of the Houston Belt & Terminal Railroad based upon his understanding the resignation was conditioned upon his completing his probationary period with the Houston Belt & Terminal Railroad. The record established the Claimant went to work for the Houston Belt & Terminal Railroad on March 7, 1983, and was terminated on March 14, 1983.

The record contains the following statement signed by the Claimant on March 2, 1983:

"I, Daniel George Robertson, Jr., do hereby resign from service of the Missouri Pacific Railroad and expressly release and relinquish unto the said Railroad all my rights as an employee, including seniority, health and welfare benefits, and other rights which may heretofore have accrued to me as an employee. This resignation is absolute and unqualified and shall be effective immediately."

The record also contains an acknowledgment of the above resignation. The acknowledgment dated March 10, 1983, states:

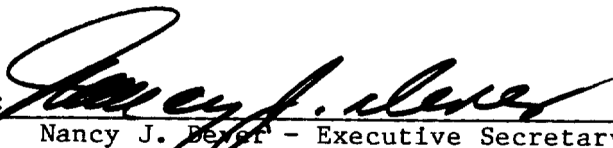
"This will acknowledge your letter of March 2, 1983 resigning from the services of the Missouri Pacific Railroad Company as Machinist at Settegast Diesel Shop, Houston, Texas, resignation being effective March 2, 1983."

Based upon the above evidence, this Board is unable to sustain this Claim. The resignation is in writing and contains no hint of it being conditional. If the Houston Belt and Terminal Railroad made a commitment to the Claimant as asserted, the complaint should have been lodged with that Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of August 1986.