

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 Rules 11, 12 and 24 of the controlling Agreement on February 11, 14, 17, 24, 25 and 28, 1983 when they reassigned Carman G. Simons to paint diesel units in paint house. Then filled his regular assignment with another employe on cited dates.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen O. Gutierrez, February 11, 1983; S. Matthews, February 14, 1983; P. V. Soto, February 17, 1983; H. Bernal, February 24, 1983; B. Galle-gas, February 25, 1983 and J. Benton, February 28, 1983 for twelve (12) hours each account said 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.

The Carrier maintains a freight car facility at its Settegast Yard at Houston, Texas. At the time of the events giving rise to the instant Claim, two (2) of the eleven (11) regular Carmen assignments were bulletined as "Carmen-Welder." A third assignment was bulletined as "Carman-Welder-Torchman" which was filled by Carman G. Simons. The Carrier's Houston facility includes a Repair Shop and a Paint Shop. On February 11, 14, 17, 24, 25 and 28, 1983 Carman G. Simons was moved by the Carrier from his rip track assignment to the Paint Shop where he was utilized in the painting of diesel units.

The Organization contends that the Carrier assigned other Carmen in the Repair Shop to fill the vacancy created by the movement of Carman G. Simons on the dates in question. The Organization points out that Carman G. Simons was the only Torchman assigned to the Repair Shop on the dates in February, 1983. Since the Carrier did not close the Repair Shop on these dates, the Organization contends that "the Carrier had to reassign employees" to fill Carman G. Simons' job in the Repair Shop. Accordingly, the Organization concludes that the Carrier violated Rules 11, 12 and 24 of the Controlling Agreement and the Carrier's policy letter dated February 25, 1970.

This case concerns the procedure of "back-filling" which involves the moving of a Carman from his job to another job and the Carrier further moves other employees to "the position of the Carman first moved." In its February 25, 1970 policy letter, the Carrier acknowledged that "so long as the vacancy of the mechanic was not filled by another, during the time he was away from his regular assignment," the Agreement is not violated.

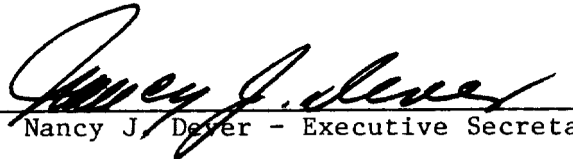
Based upon the record, this Board concludes that there was no further moving of other employees into Carman G. Simons' job. The position of Carman G. Simons was blanked, and the remaining Carmen remained on their regular jobs, and performed their regular work. The Organization contends that the Carrier was given the name of the Foreman who filled Carman G. Simons' regular assignment. It is not enough to assert that Carman G. Simons' position was filled without providing the names of the Carmen who filled the position. This Board has consistently held that the party instituting the claim in a non-disciplinary case, (the Organization), is required to satisfy its burden of proof. Mere assertions, without more, do not constitute probative evidence to support a claim. Furthermore, the Organization has failed to demonstrate that the "Torchman" position exclusively performs the welding, cutting and heating at the Houston facility or that other Carman-Welders do not routinely perform "torch work" that is incidental to the repair of freight cars. As a result, the instant Claim lacks evidentiary support.

Rule 11 is entitled "Filling of Vacancies" and provides that an employee filling the job of a higher rated employee will receive the higher rate and if he fills the job of a lower rated employee, he will receive his current rate. This Board cannot conclude that this Rule is applicable to the instant case. Rule 12 is entitled "filling New Positions or Vacancies" and concerns the bulletining of new positions and vacancies of 15 days or more duration. Clearly, this Rule is not applicable to the facts of the present case. Similarly, Rule 24 which is entitled "Seniority" is not relevant to the instant dispute. The Claim is therefore denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 10th day of September 1986.