

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin 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 12 and 31 of the Controlling Agreement when they refused to let Carman N. Ibarra to return to his regular assignment on the day shift at Brownsville, Texas.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman N. Ibarra for March 15 and 16, 1984, then beginning March 19, 1984, for five (5) continuous days each week at the time and one-half rate of pay and continuing until the violation is corrected as Carman N. Ibarra was not permitted to return to his regularly assigned job on the day shift at Brownsville, Texas.

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.

This Claim arises out of the same set of circumstances as disposed of in Second Division Award 10998. In that case the Claimant was seeking mileage and overtime pay due to his having bumped another employee in Harlingen, Texas. In this case the Claimant is protesting the disqualification from his original position in Brownsville, Texas.

The Organization claims a violation of Rule 12, which reads in pertinent part:

"Rule 12. FILLING NEW POSITIONS OR VACANCIES

(a) New jobs created and vacancies will be bulletined and the oldest employees in the point of service shall, if sufficient ability is shown by fair trial, be given preference in filling."

Also, the Organization states that Rule 31 involving discipline was breached in that the disqualification is considered a disciplinary action by the Organization, and the employee was not given a fair Hearing as required in the Rule. The Organization also argues the Claimant is well qualified to perform the position of inspecting cars, and just because the Mexican Railroad will not allow him on their property is not a sufficient excuse to disqualify the Claimant from his position.

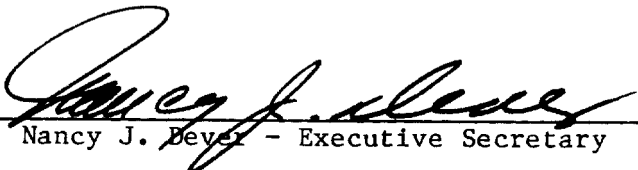
Upon complete review of the evidence, the Board finds this case was precipitated not by the Carrier, but by the Mexican Railroad. The practice of disqualifying employees without a fair and impartial Hearing, whether instigated by outside forces or not, could be subject to potential abuses. However, in this case the Carrier did not abuse its discretion. The Carrier seems to be perfectly willing to allow the Claimant to continue in his former position; however, the Mexican Railroad requested the Claimant not be allowed on their property, and the Carrier has no control over this situation. In future cases if it appears the Carrier has abused its discretion, perhaps the Board will take a different view. In this case the Carrier has not acted arbitrarily and capriciously, nor has any specific Rule been proven to have been violated. The Carrier has afforded the Claimant all of his seniority rights with the exception of bidding on jobs which would require him to be on the Mexican Railroad's property, and therefore the Carrier is found to have acted reasonably, and the Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1986.