

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 the controlling agreement, particularly Rules 20(a) and 3(b), when they failed to notify Carman J. W. Harris of being bumped causing him to report for work and being sent home. Also, he was denied the right to bid job back when it was posted according to Rule 20(a).

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Harris as follows:

- a) Eight hours (8) pay for September 30, 1983, at straight time rate;
- b) Four hours (4) at pro rata rate for each Sunday he was forced to work on position not of his choice;
- c) Eight hours (8) pay at pro rata rate for each Monday he was forced to work account being denied to place himself;
- d) Eight hours (8) at straight time rate for each Wednesday he was forced to take a rest day;
- e) Eight hours (8) at straight time rate for each Thursday he was forced to take a rest day.

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, a Carman in service with the Carrier, had his position abolished due to a September 22, 1983 Bulletin. This Bulletin #D-287 also contained other job abolishments, resulting in reduction in force of 17 Carmen. In addition, also on September 22, Bulletin #D-284 was issued which abolished all of the jobs at the Carrier's Dupo Train Yard. On September 23, 1983 Bulletin #D-292 was posted advertising the jobs remaining following the force reduction. The Organization argues that Rule 20(a) gives the Claimant the right to be reassigned.

The Organization states that when the Claimant reported to work on September 29, 1983, he was told he had been bumped by a senior Carman. The Claimant's Supervisor was not aware of the bump, and the Claimant was allowed to work on September 29. When he reported to work on September 30, the bump had been confirmed and the Claimant was sent home. The Organization claims that the Claimant was discriminated against in that he was only called one time regarding the bump, and other employees were called at least five times. The Organization notes that the Claimant was told to report to the Carrier's St. Louis facility by 7:00 A.M. on October 1, 1983 or lose his position. The Claimant did report but was only able to place himself on an open position with Wednesday's and Thursday's off. The Organization argues that, if the Claimant was properly notified of the bump, he could have bumped a relief Carman with the same workweek and days off he desired.

The Carrier states that the force reductions at their Dupo Yard resulted from a loss of business. The Bulletin of September 22, 1983 resulted in reduction of 17 positions. The Carrier argues they have the right to abolish all jobs and re-establish new ones following such force reduction allowing all Carmen to bid. Those who were displaced could bid at either the Dupo or the St. Louis facility. Prior to the Bulletins, the Claimant had a third shift position with Sunday and Monday off. The Claimant did bid on a third shift Yard job but was bumped by a senior Carman. The Carrier did attempt to notify the Claimant by phone at 11:15 A.M. on September 29, 1983 but was unsuccessful. The Claimant did not check with the office on September 23 regarding his bump status. He was informed of the potential bump on both September 29 and September 30. The Carrier states that the Claimant is an experienced employee and knew the procedure.

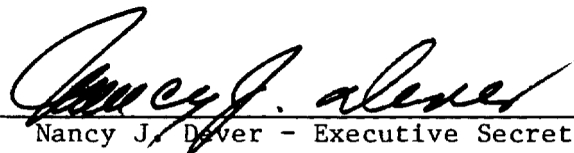
Upon complete review of the evidence, the Board finds the Claimant failed to exercise his seniority due to his own actions. He was informed of a potential bump on September 29 yet failed to check with the office regarding his status. The Carrier also attempted to contact the Claimant by phone, although it was unsuccessful. The Claimant is an experienced employee, and he either does or should know the procedure in this matter. All other employees involved took advantage of their rights under the Controlling Agreement and, as a result, the Claimant had to take what was left. Rule 20(a) does not apply to positions that have been abolished due to force reductions. The Board finds no evidence in the record to sustain the Organization's claim of discrimination in this matter. It is the Claimant's responsibility to protect his rights, which he did not do in this situation. Therefore, the Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

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