

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 Rule 25(a) and 102 of the Controlling Agreement when they had General Car Foreman operate Pettibone on rip track at Houston, Texas, April 14, 1984.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman S. Staggers in the amount of a four (4) hour call.

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.

On April 14, 1984 Carrier's General Car Foreman used a Pettibone Mobile Crane to move two cars on the Carrier's rip track at its Houston, Texas facility. The Pettibone was utilized because the Carrier's Repair Track Air System was inoperative and the usual method of using air jacks to lift the cars was not possible.

The Organization contended that the above incident constitutes Supervisor's performing work in violation of Rules 25A and 102. The Organization states that it is the Carman's responsibility to operate the Mobile Crane and disputes the Carrier's contention that the Supervisor was instructing the two Carman. The Organization notes the Supervisor was alone during the operation and neither Carman was shown to be unqualified to operate the equipment.

The Organization admits that the work is not exclusive to the Carmen, but when this equipment is used to accomplish Carman's work, it is a Carmen's machine. The equipment that was not functioning was equipment of the Carmen's craft. In support of its position the Organization cited Awards 8029, 9117, 9147, 4627, 5191 and 6266.

The Carrier states that Supervisors may operate equipment while instructing employees, and since neither Carman was previously qualified on this equipment and subsequently both Carmen that were present on the date in question have used the Mobile Crane to lift cars, this shows that instruction did take place. The Carrier further stated that the Organization must show that work performed is exclusive to the craft on a systemwide basis. The Organization bears the burden of proof in this matter and cannot show any loss by the Claimant in this matter.

On complete review of the evidence, the Board finds the Organization bears the burden of proof to show that a violation occurred. Both the Carrier and the Organization agree that instruction by supervision is allowed, and it is undisputed that the Carmen have used the Pettibone Mobile Crane to lift cars after this incident. Certain Awards cited by the Organization cover claims that Supervisors performed work beyond the scope of their duties. This was not proven in this case. There is no proof that teaching did not occur. There is no exclusivity of the use of this equipment. The unit was being used because the regular Carmen's equipment was not working, thus necessitating the use of the Mobile Crane. The Organization cited other Awards which upheld the Organization in this set of circumstances. As noted above the Organization has not proven the initial violation, therefore, the operation of this particular piece of equipment is moot. 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.