

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman 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 when they removed Carman G. Simons, who was assigned as a torchman on Spot Rip 4 & 5, and back filled his job.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen R. Batiste for August 8, 1983, R. Nervis for August 9, 1983, O. Gutierrez for August 10, 1983, and S. Matthews for August 11, 1983 for eight (8) hours each. All of the above carmen were available to perform the work.

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.

By letter of October 3, 1983, the Organization filed Claim that the Carrier violated the Agreement by "back filling" vacant positions. Specifically, the Organization maintains that the Carrier removed Carman G. Simons from his regular bulletined position and assignment of "Torchman-Welder" on Spot Rip, Tracks 4 and 5 to work in the Paint Shop on Business Car #8. To fill Simons four day vacant position the Carrier then back filled other Carmen to the vacant position in violation of Rules 11, 12, and 24 of the Agreement.

The Carrier maintains that no Agreement violation occurred. It does not dispute the Organization's position that Simons worked on Car #8, however,

it maintains that such work was routine repair track work. The Carrier further argues that nine (9) other Carmen were assigned to Welder positions on repair track and as a group performed the same type of work. While Carman Simons was working on his assignment, no one filled his position and no violation of the Agreement occurred.

The weight of the evidence and the ultimate burden of proof for any Claim is the responsibility of the moving party. The record before this Board does not contain sufficient evidence of probative value to establish a Rule violation and in particular any of the cited Rules. No evidence establishes a clear vacancy to be filled. No evidence of record establishes that the Carrier called an employee to fill the position rather than utilized the other regularly assigned employees to continue to perform their regular work. No evidence of record establishes that, as stated in the October 19, 1983, letter, "there is a difference" between "Carman-Welder-Torchman" and "Carman Welder" positions of the other nine (9) employees. If there is a difference that would preclude other Carmen from performing torchwork the evidence of record does not so document. If there is evidence to indicate that such position of "Carman-Welder-Torchman" is a higher rated job (Rule 11) it is not in the record nor is it clear how this Rule applies. It is even more difficult to determine how Rule 12 on "Filling New Positions or Vacancies" has any applicability and Rule 24 on "Seniority" has no relevance whatsoever to the case at bar.


This Board concludes that upon consideration of all the facts and arguments that the Claim must be denied for lack of evidentiary support. This is consistent with Second Division Award 10978 pertaining to this same issue between these same parties. This Board concurs with the reasoning of that Award.

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 3rd day of December 1986.