

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-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That the Missouri-Kansas-Texas Railroad Company violated the agreement between the Missouri-Kansas-Texas Railroad Company and the Brotherhood Railway Carmen of the United States and Canada, effective January 1, 1957, as amended, and the Railway Labor Act, as amended, when the Missouri-Kansas-Texas Railroad Company removed Carman K. R. Bruce from his job he had bid in at Dallas, Texas on or about November 15, 1982.

2. That Carman K. R. Bruce be allowed eight (8) hours pay at the proper pro rata rate for each day that he has been improperly removed from his job in Dallas, Texas, commencing on or about November 15, 1982.

3. That the jobs advertised "To All Furloughed Carmen - South" be abolished and readvertised to all furloughed MKT Carmen by Certified Mail and the senior applicant be assigned to the job of his choice.

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.

On September 20, 1982, Claimant, a Carman who was employed by the Carrier in its Bellmead Car Department, Waco, Texas, was furloughed in a systemwide general force reduction. On October 18, 1982, the Claimant accepted a job at the Carrier's facility at Dallas, Texas. He filled the job until November 12, 1982, when he was assigned by the Carrier to the permanent position of Lead Car Inspector at Dallas, Texas.

The job which the Claimant filled between October 18 and November 12, 1982, is in dispute. The Organization contends that while the Claimant filled the job, the Carrier "rebuletined" the position. This resulted in other Car-men who were furloughed from other Carrier points, who had never worked in Dallas, Texas, bidding and being assigned to the job occupied by the Claimant. In filing the instant Claim the Organization contends that the Claimant bid on every advertised job and was awarded and assigned to a less desirable job than the job he had originally bid on.

After carefully examining the record, the Board concludes that the Claim must be denied. It may very well be true that when the Claimant accepted the job at Dallas, Texas, he was not advised by the Carrier that the job was temporary. On the other hand, the Carrier never informed the Claimant that the job was permanent. Indeed, the Board is of the Opinion that the Claimant should have known that the job at Dallas, Texas, was not a permanent position and that he would not accumulate seniority, while filling the job.

It should be pointed out, that under Rule 23(b) of the Controlling Agreement, seniority of Carmen "shall be confined to the point employed \* \*." Rule 21(f), which deals with Reduction in Forces, in relevant part, provides:

"While forces are reduced, if men are needed at other points, furloughed men will be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the Company, seniority to govern. (See letter July 12, 1950, page 94 attached)."

When new positions are established or vacancies occur, the Carrier posts to all employees at the point where the vacancies occur, bulletins advertising such vacancies. This is required to give employees with seniority at the said point, the opportunity to bid on the advertised vacancy.

At Dallas, Texas, Car Foreman Julius advertised vacancies at that point. Thus Carmen at the points where the vacancies occur possess a prior right to bid on the vacancies. It should be noted that only employees with seniority at the points where the vacancies occur have the right to bid on the vacancies. The record discloses that the Claimant did not establish seniority and remain permanently in the job which had been advertised only at Dallas to Carmen with seniority. The Claimant did not have seniority at Dallas, Texas, or any point, other than Waco, Texas.

The Claimant had been working temporarily at Dallas, Texas. He was never assigned to a permanent vacancy in accordance with the procedures under the Agreement. Although the Claimant filled the job in question after he bid on the job, no one with seniority at Dallas bid on the advertised vacancy. If the Company would have assigned the Claimant to the Dallas job on a permanent basis before the job was advertised to furloughed Carmen, the Carrier would have violated the Agreement. After the vacancy was advertised to furloughed Carmen at points other than Dallas, the vacancy was filled by a furloughed Carman.

To sustain the Organization's contention that the Claimant filled a permanent vacancy at Dallas, Texas, and accumulated seniority while filling the vacancy would seriously undermine the Agreement, and practice of the Parties.

In light of the aforementioned considerations, the Claim is 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 7th day of January 1987.



RECEIVED  
JAN 20 1987  
R. L. HICKS

LABOR MEMBERS DISSENT

TO

AWARD NO.11109, (DOCKET NO. 10742)

(Referee Hyman Cohen)

The Majority erred in their decision in this Award.

The Majority ignored completely the agreed to application of the Rule as stated in the July 12, 1950 letter of understanding which stated:

"First an employe who holds seniority at point "A" and is furloughed from that point, who has an opportunity to place himself on a job at another seniority point, or point "B", would accumulate seniority from the date he starts work at point "B".

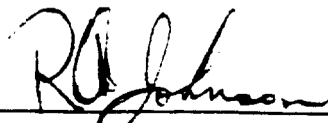
They further ignored the record which contained copies of the Bulletins advertising the vacancy, none of which stated the position was temporary.

The Claimant began work at Dallas, Texas on October 18, 1982, under the above quoted interpretation from the Agreement, the Claimant had placed himself on a position, therefore, establishing seniority at Dallas, Texas, on the date he started working there.

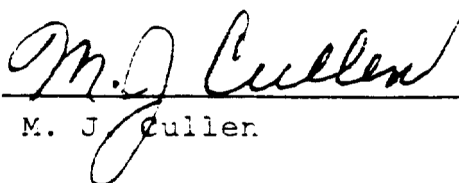
Because of the Majority's erroneous decision, we vigorously dissent.

Labor Members Dissent  
To Award No. 11109  
Docket No. 10742

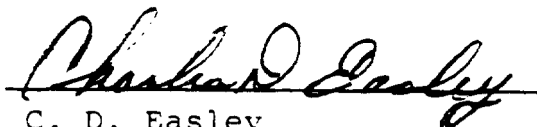
- 2 -

A handwritten signature in cursive script, appearing to read "R. A. Johnson", written over a horizontal line.

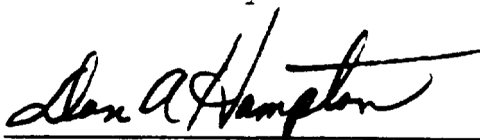
R. A. Johnson

A handwritten signature in cursive script, appearing to read "M. J. Cullen", written over a horizontal line.

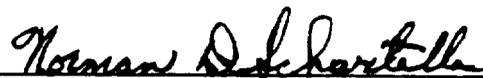
M. J. Cullen

A handwritten signature in cursive script, appearing to read "Charles D. Easley", written over a horizontal line.

C. D. Easley

A handwritten signature in cursive script, appearing to read "D. A. Hampton", written over a horizontal line.

D. A. Hampton

A handwritten signature in cursive script, appearing to read "Norman D. Schwitalla", written over a horizontal line.

N. D. Schwitalla