

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the Controlling Agreement Rule 20(c) when they failed to call Carman M. A. Rivera from layed off status and they worked set up apprentices on jobs he was entitled to being the senior furloughed carman.

2. That the Missouri Pacific Railroad Company be ordered to compensate M. A. Rivera for all lost wages starting January 2, 1984, and continuing until he is returned to service and all benefits due him including health and welfare, dental and retirement benefits.

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.

Subsequent to the merger of the Union Pacific and the Missouri Pacific Railroads many Journeymen were furloughed. Claimant was among the Carmen who were furloughed. He was a Carman on the Missouri Pacific.

The Schedule Agreement of the Missouri Pacific contained a provision that allowed a furloughed employe to put his name on a list to be considered in the event of temporary work. Claimant had not submitted his name for any temporary work.

Prior to the consolidation of the two Railroads' rosters the Missouri Pacific had recalled three Apprentice Carmen for temporary work at Kansas City, Missouri. Because the three Apprentices had completed much of their apprenticeship, they were able to perform as "set-up" Carmen which position performs the same functions as Journeymen. Normally, set-up Carmen cannot hold a position over a furloughed Journeyman. However, the Missouri Pacific Agreement allowed them to hold temporary positions unless bumped by Carmen who had completed the prerequisite of entering their names on the aforementioned list.

After the consolidation, the Missouri Pacific Agreement controlled the work force. Three furloughed Union Pacific Carmen observed the temporary positions and placed their names on the list and displaced the Apprentices. The Organization filed this Claim stating that Claimant should have been recalled to one of the positions.

The Carrier has consistently maintained that the set-up Carmen were on temporary positions and that there was no recall obligation on its part. The record is devoid of any proof from the Organization that would rebut this position. Indeed, the fact that the Claimant had not attempted to displace the Journeymen who had acquired the positions is stated to bolster its position that the positions were temporary.

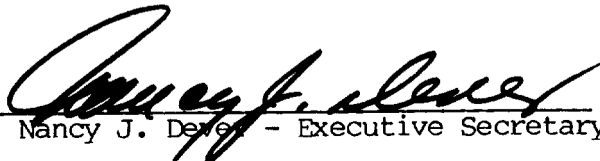
The only fact at issue is the nature of the positions. If they were permanent, the Claimant should have been recalled. If they were temporary, absent his name on the temporary list, the Claimant has no case. In either event the burden of proof rests on the Organization. There is nothing in the record made on the properties that would carry this burden of proof. Finding that the Organization has not met its burden, the Board can only deny the Claim.

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 11th day of February 1987.