

Award No. 3631

Docket No. 3314

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Wilmer Watrous when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company violated Article 5(a) of the controlling agreement and, accordingly, the claim as presented should be allowed.
2. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 137(b), when a job was established at Salina, Kansas without bulletin being posted at points under Master Mechanic, Mr. A. J. Daniel.
3. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman C. M. Stafford eight (8) hours per day at the straight time rate for June 15, 1957 to August 12, 1957, five days per week.

EMPLOYES' STATEMENT OF FACTS: Under date of October 9, 1957, the claim in this case was appealed to Road Master Mechanic A. J. Daniels, a copy of the letter is submitted herewith as Exhibit A. Under date of January 10, 1958, the undersigned directed a letter to Mr. Daniels advising him to place this claim in line for payment since he did not answer within the 60 days as required by Article V of the controlling agreement, a copy of which is submitted herewith as Exhibit B.

The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, put on a job at Salina, Kansas, on June 15, 1957, without a bulletin being posted advertising for bid.

Carman C. M. Stafford, hereinafter referred to as the claimant, was deprived of his seniority rights and privilege of bidding on this vacancy. Carman Fred McCoach, whose home point is Osawatomie, Kansas, bid in the job at Salina, Kansas, a one-man point, under Rule 137(b) and had been located there for several years. Bulletin #47, dated May 27, 1957, herewith submitted as employees' Exhibit C, was posted at Salina, furloughing Carman

familiar with the facts or could not think of a theory upon which to base a claim within the time limit provided for filing claims. Article V 1(a) of the agreement of August 21, 1954, provides that

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

In the instant claim, the "occurrence" is the failure to bulletin the position at Salina when it was reestablished June 15, 1957. As we have seen, a claim was first presented on October 9, 1957, by the general chairman which was considerably more than 60 days from the date of the occurrence. For that reason the claim must be dismissed and, as stated in Award 2370, the subsequent progress of the claim on the property need not be considered.

However, if the Board should not dismiss the claim on the basis stated, the carrier has pointed out that paragraph (1) of the employees' statement of claim does not afford a basis for relief since the carrier did comply with the time limit rule in every respect.

The carrier has admitted that the position at Salina was not bulletined when reestablished on June 15 as alleged in paragraph (2) of the employees' statement of claim, but that such oversight does not in any way justify the penalty which the employees asked this Division to inflict on the carrier, as stated in paragraph (3) of the employees' statement of claim because the agreement does not provide for such a penalty and claimant suffered no loss of earnings as a result of the omission.

For the reasons stated above, the entire claim should be dismissed, but if the Board should not so decide, there is no basis for Parts 1 and 3 of the claim and they must be denied.

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 employees involved in this dispute are respectively carrier and employe 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 were given due notice of hearing thereon.

The carrier conceded that it violated Rule 137(b). In view of the circumstances and the award contained here the Board finds no need to rule on Part 1 of the claim, sustains Part 2 and Part 3 at pro rata rate retroactive 60 days from date of filing, October 9, 1957.

This claim differs from the circumstances in Award 3594 when the claimant was not prevented from exercising his right of transfer. There a specific misunderstanding took place on a specific day; here the claimant might not have learned of carrier's violation within 60 days but whenever he learned of it, the carrier might have ceased to violate his rights by properly bulletining the position in dispute.

AWARD

Sustained as stated in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1961.