

Award No. 3702

Docket No. 3179

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement other than a carman was improperly used to fill the position of Carman W. W. McDonald, while he was off on his annual vacation during the period July 1, 1957 to July 19, 1957, at Myrick, Missouri.

2. That accordingly, the Carrier compensate Carman W. C. Trainor in the amount of fifteen (15) eight (8) hour' work days at the applicable rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Myrick, Missouri is a point located about 39 miles from Kansas City, Missouri, on what is known as the River Route Freight Line running between Kansas City and St. Louis, Missouri. Since the Missouri Pacific Railroad Company, hereinafter referred to as the carrier employs only one car inspector at Myrick, Missouri, namely, Mr. W. W. McDonald, this point is termed a 'one-man' point.

On July 1, 1957, Carman W. W. McDonald started his annual vacation, completing same on July 19, 1957. Mr. H. H. Barbarick, whose name appears on the seniority roster at Kansas City, Missouri, as a laborer was assigned to fill the position of Carman McDonald during his absence on annual vacation. The carrier did canvass the system for a furloughed carman to fill this vacation vacancy, however, Mr. Sweeney, Acting General Foreman at Nevada, Missouri, did not receive the notice until Friday, June 28, 1957, requesting the service of a carman to fill this vacation vacancy at Myrick, Missouri.

As stated above, the call went out on June 28, 1957 and Mr. W. C. Trainor, a furloughed carman, hereinafter referred to as the claimant, made application for the job and after Kansas City was called on this matter, the local chairman and the claimant were told the job had already been filled. Later it developed that this job had been filled by a laborer instead of a carman.

This matter has been progressed up to and including the highest disig-

Note that Mr. Clark said that "There was no intention in our minds whatever to build up basis for claim penalties . ." in requesting carrier's assistance in disseminating information to laid off men. Rule 23 does not require the carrier to search out the men who are laid off all over the system when men are needed in a particular craft and class. The rule merely obligates the carrier to give preference in employment to such laid off men at points where work of their particular craft is available if they apply for such work. In the instant claim, the information of the available work at Myrick was made known at Nevada and claimant did have knowledge of the available work. Rule 23 does not require the dissemination of such information but the carrier did disseminate the information under the arrangement worked out between the chief mechanical officer and System Federation No. 2 in connection with which there was no intention to build up basis for claim. However, the carrier lived up to all that the parties agreed was to be done. **Claimant was informed of the available work.** That is all the carrier undertook to do by way of co-operating with the employees. **After the employe is informed of the available work, it is up to him to make proper application therefor.** No commitment of any kind was made to assist the employe in applying for the work. It was at this stage of the proceedings that unfortunately the line of communication fell down. Claimant went to the acting general foreman who called Kansas City on claimant's behalf. It may be that claimant was thereby misled by a fellow employe acting in the capacity of a supervisor for the carrier into thinking that he had made a proper application for the work. It was because of the possibility that claimant may have been misled that the carrier offered to make claimant whole for any loss of earnings.

To summarize, Rule 23 did not obligate the carrier to call claimant for the work at Myrick or even to notify him of the availability of such work. The chief mechanical officer did undertake to cooperate with the employes in disseminating information helpful to them in applying for work to which they were entitled under Rule 23. The carrier fully cooperated in this case in the manner provided. Claimant did receive information of the availability of the work. There was nothing more for the carrier to do. It was then the obligation of claimant to make a proper application for the work. He requested the assistance of the acting general foreman, and, at this point, a fall down in the line of communication occurred. The carrier did all that was to be done under the cooperative arrangement worked out between the chief mechanical officer and System Federation No. 2. Because claimant may have been misled by an employe acting in a supervisory capacity, the carrier offered to make claimant whole for any loss of earnings.

The only rule upon which this claim could possibly be based is Rule 23. Rule 23 was not violated. Therefore, the claim must be denied in its entirety.

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 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 proximate cause of Claimant's loss of opportunity to fill the vacation

vacancy at Myrick, Missouri commencing July 1, 1957, was the Carrier's delay in giving timely notice so as to afford Claimant reasonable opportunity to take advantage of preference afforded him under Rule 23. The Carrier knew of the impending vacancy prior to June 25, 1957 when it gave notice, which notice was not received at Nevada, Missouri until June 28, 1957.

The record discloses, however, that the Claimant obtained other employment with the Carrier commencing July 9, 1957, and that he worked throughout the remainder of the vacation period.

On the facts and circumstances of record, we find that Claimant is entitled to be paid the sum he would have earned during the vacation period at Myrick, Missouri—July 1 through July 19, 1957—minus the amount earned by him for services performed for the Carrier from July 9 through July 19, 1957.

AWARD

Claim sustained, per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1961.