

Award No. 3818

Docket No. 3282

2-MKT-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

DISPUTE: CLAIM OF EMPLOYES: 1. That under the provisions of the controlling agreement, Carmen Joe Vesper and C. T. Burnette of Franklin, Missouri were improperly denied their right to perform work of the Carmen's craft at Franklin, Missouri when the carrier dispatched two carmen from Parsons, Kansas seniority point to perform work of the Carmen's craft.

2. That as a result thereof, the Carrier be ordered to compensate Carmen Joe Vesper and C. T. Burnette each in the amount of 8 hours at the straight time rate and 7 hours each at the overtime rate for February 15, 1958; for 8 hours each at the straight time rate for February 16, 1958, and 8 hours each at the straight time rate for February 17, 1958.

EMPLOYES' STATEMENT OF FACTS: Carmen Joe Vesper and C. T. Burnette, hereinafter referred to as the claimants, were employed by the Missouri-Kansas-Texas Railroad — Missouri-Kansas-Texas Railroad Company of Texas, hereinafter referred to as the carrier, at Franklin, Missouri, in car department.

On February 10, 1958, the carrier posted Bulletin No. 105, abolishing all carmen positions at this point effective February 13, 1958.

On February 15, 1958, two carmen from Parsons, Kansas, Seniority point, a distance of 197 miles, arrived and went to work on Franklin, Missouri, repair track; they worked 8 hours straight time and 7 hours overtime. On February 16, these two carmen worked 8 hours straight time on this repair track, the following repairs were made by these two carmen:

C. O. R. X. No. 2572, Repair to truck bolster.

G. A. T. X. No. 567 dismantling truck and changed out a pair of wheels.

K. C. S. No. 26304, dismantling truck and changed out a pair of wheels.

N. K. P. No. 77438, rebrassed journal.

having car repairs thereafter performed by carmen in emergency road service as provided in Rule 7 of the controlling agreement is strictly in accordance with the long established and recognized interpretation and application of the agreement. A partial list of locations where carmen were formerly employed, and later discontinued, follows:

"Sedalia, Missouri	Discontinued, January, 1957
Ft. Scott, Kansas	Discontinued, July, 1939
Clinton, Missouri	Discontinued, August, 1951
Cushing, Oklahoma	Discontinued, February, 1957
Atoka-Stringtown, Oklahoma	Discontinued, February, 1957
Coffeyville, Kansas	Discontinued, February, 1957
Tulsa, Oklahoma	Discontinued, January, 1955
Sherman, Texas	Discontinued, January, 1957
Altus, Oklahoma	Discontinued, July, 1956
Elk City, Oklahoma	Discontinued, April, 1954
Woodward, Oklahoma	Discontinued, July, 1949
DeLeon, Texas	Discontinued, January, 1951
Stamford, Texas	Discontinued, May, 1948
West Mineral, Kansas	Discontinued, February, 1948
Lindale, Missouri	Discontinued, February, 1957
Osage, Oklahoma	Discontinued, February, 1958."

At each of the above points discontinuance of the position or positions of carmen was a permanent abolishment, and thereafter car repairs at those points have been performed in emergency road service — the same as was done at Franklin, Missouri at the time the instant claim was presented, and is now being done. No complaint or protest has been received from the carmen concerning this method of handling car repairs at the above-listed points which, carrier submits, is a recognition on the part of the employees and organization that the agreement rules do not prohibit such handling.

The employees and organization have shown no rule or provision in the controlling agreement which perpetuates seniority of former employees at repair facilities which have been abolished and discontinued by the carrier.

The employees and organization have not alleged and shown any rule or provision in the controlling agreement which requires the carrier to maintain any repair facility, or prohibits the carrier from abolishing such facilities and having car repairs thereafter performed in emergency road service when such action is deemed by management to be necessary or advisable.

The employees and organization have failed to establish a basis for a sustaining award, and the carrier respectfully requests that the claim be denied.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the organization and employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Second Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

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 waived right of appearance at hearing thereon.

Claimant carmen were employed in the Car Department at Franklin, Missouri. On February 13, 1958 all carmen's positions at Franklin were abolished and the Car Department discontinued at that point. On February 15 and 16 two carmen were sent from the Parsons Car Department to make repairs to cars at Franklin. Claimants held seniority at Franklin and Employees assert that they should have been used for that service.

Carrier contends that claimants were not subject to recall to service since the only point at which they held right to service no longer existed; that upon discontinuance of the Car Department at Franklin those who held seniority rights at that point did not become furloughed employes but that their right to perform work for Carrier ceased to exist when the Franklin Car Department, where they held seniority, ceased to exist.

While claimants' seniority was "confined to the point employed" it was not conditioned on maintaining a car department there and it gave them the seniority right to perform the work of their craft if and when it existed at that point, as furloughed employes. No contention is made that claimants were not available and they were entitled to be called for the work here claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1961.