

Award No. 3819

Docket No. 3329

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 EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

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

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the controlling agreement, Carmen Harry Burrows and Joe Vasper 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 Harry Burrows and Joe Vasper each in the amount of eight (8) hours each at the straight time rate for July 8, 9 and 10, 1958; for four (4) at the straight time rate for July 11, 1958.

EMPLOYEES' STATEMENT OF FACTS: Carmen Harry Burrows and Joe Vasper, hereinafter referred to as the claimants, were employed by the Missouri-Kansas-Texas Railroad Company — 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 July 8, 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 eight (8) hours each at the straight time rate on each of the days July 8, 9 and 10, 1958. On July 11, 1958 they worked four (4) hours each at the straight time rate on this repair track, the following repairs were made by these two men:

"ITC No. 6230 dismantling truck and changed out pair of wheels.
P.R.R. No. 71250, dismantling truck and changing out pair of wheels.
G. A. No. 12249, shifted load.

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 carman was a permanent abolishment, and thereafter car repairs at those points have ben 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.

The employes and organization have not shown a rule or provision in the controlling agreement which supports their claim. No rule or provision has been cited which perpetuates seniority of former employes at locations where repair facilities have been abolished and discontinued by the carrier, and the Carrier asserts without fear of successful contradiction that no such rule exists.

The employes 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 employes and organization have failed to establish a basis for a sustaining award, and have failed to sustain the burden of proof which is theirs. 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 employes 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.

This case involves the same parties and presents the same issues as considered in Award 3818 and like award should follow here.

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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.