

Award No. 3821

Docket No. 3331

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 B. W. Waters and W. L. Doughty, Oklahoma City, Oklahoma, were denied their rights to perform work of the Carmen's craft at Oklahoma City, Oklahoma 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 B. W. Waters and W. L. Doughty each in the amount of 8 hours at the applicable straight time rate for each of the following days: May 17, 18 and 19, 1958.

EMPLOYEES' STATEMENT OF FACTS: Carmen B. W. Waters and W. L. Doughty, 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 Oklahoma City, Oklahoma.

All carmen positions including the claimants were abolished at the end of tour of duty, February 13, 1958, at this point.

On May 17, 1958, two carmen from Parsons, Kansas began work on the repair track 7:00 A.M. and worked eight (8) hours. On May 18, 1958, the same two carmen began work on this repair track at 7:00 A.M., and worked eight (8) hours and worked the cars that were bad ordered on the Oklahoma City, Oklahoma, rip track.

Oklahoma City, Oklahoma is approximately 207 miles from Parsons, Kansas, and is the end of the line.

This claim has been appealed as provided in controlling agreement effective January 1, 1957 and having discussed it thoroughly with the highest officer of the carrier to handle such matters, the claim was declined, which is confirmed by letters to the undersigned from Mr. A. F. Winkel, dated July 30, 1958 and September 30, 1958.

done at Oklahoma City, Oklahoma at the time the instant claim was presented, and is now being done.

The employees 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 employees 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 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 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 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 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 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.

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.