

Award No. 3822
Docket No. 3304
2-MP-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. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY—Gulf District

DISPUTE: CLAIM OF EMPLOYEES: 1. That Carman Painter A. F. Trevino was unjustly dealt with and denied his rights under the controlling agreement when he was not allowed to exercise his seniority and displace junior painter Oscar Cabra in the coach shop at Kingsville, Texas on September 3, 1957.

2. That the Missouri Pacific Railroad Company be ordered to additionally compensate Painter A. F. Trevino in the amount of \$.06 cents per hour beginning with September 3, 1957 and until such time as he is allowed to displace junior painter Oscar Cabra as Lead Painter in the Coach Shop at Kingsville, Texas.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 2, 1957 Painter A. F. Trevino, hereinafter referred to as claimant, held an assigned position as freight car painter at Kingsville, Texas. On or about June 7, 1957 the painting of freight cars was discontinued at that point and thereafter claimant was used to paint diesel engines until his position was abolished on July 2, 1957. During this time he was classified as a freight car painter and was carried on the freight car department force report.

On July 2, 1957, Bulletin No. 35 was posted in the freight car shop discontinuing the position held by the claimant. This bulletin was in error as it classifies claimant as diesel painter when he was actually assigned as freight car painter. Nevertheless his position was discontinued and he could not exercise his seniority as the entire painter force was furloughed also on July 2, 1957.

On September 3, 1957 the coach shop at Kingsville was reopened and all those who were furloughed on July 2, 1957 were recalled to service, including the claimant. As before shown, the position formerly held by the claimant had been discontinued and was not re-established, therefore it was necessary that he place himself on whichever position he desired and which his seniority would entitle him to. This he did by writing Mr. R. V. Scholz under date of September 3, 1957 stating that he desired to displace Lead Painter Oscar Cabra as lead painter in the coach shop at Kingsville. This request was denied and claimant

their former positions when forces were restored. There is no basis under the agreement for allowing claimant's request that he should have been permitted to displace the lead painter on September 3, 1957. It follows that this claim must be declined.

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 respectfully 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.

All painters at Kingsville were carried on one seniority roster and worked interchangeably in the Freight Car Department and Coach Shop. Claimant held as assigned position as freight car painter. On June 7, 1957 the painting of freight cars was discontinued and he was used to paint diesel engines in the Coach Shop but it does not appear that his car painting assignment was abolished or that he was assigned to a position as diesel painter. His name remained on the Freight Car Department force report. Effective July 6, 1957, bulletin was posted discontinuing claimant's job. Therein it was identified as "diesel painter" but as in the Freight Car Department.

Bulletined on the same day, effective July 5, there was reduction in force in the Coach Shop discontinuing seven coach painter jobs and lead painter job, being all the coach painter jobs in the Coach Shop. On September 3, the diesel painter jobs in the Coach Shop were re-established but no freight car painter job was re-established in the Freight Car Department. Claimant sought to replace the lead car painter in the Coach Shop and his request was denied.

Claimant's assigned position was that of freight car painter in the Freight Car Department. That position was not re-established and claimant could bid on the lead painter job.

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.