

Award No. 3843

Docket No. 3487

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson 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 the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, violated the controlling agreement, particularly Rule 23, DeSoto, Missouri, when forces were increased at Osawatomie, Kansas without a system call being put out, thereby depriving Carmen Edgar L. Sohn, Marvin Kite, Albert J. Costello, Joseph H. Clark and James B. Stafford, hereinafter referred to as the Claimants, of the opportunity to fill the jobs at Osawatomie, Kansas.

2. That accordingly, the Carrier be ordered to compensate the Claimants in the amount of eight (8) hours per day each at the straight time rate for March 1, 1958 and for as long as the employees are displaced by junior men at Osawatomie, Kansas.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a freight car building shops at DeSoto, Missouri, a point approximately 47 miles south of St. Louis, Missouri. On February 28, 1958, there was a large force reduction made at this point following which the men made out and signed slips stating that they were available to accept positions at other points. While they are not obliged to sign anything under the agreement, just make themselves available, they readily signed these slips in conformity with Chief Mechanical Officer Christy's letter of May 1, 1948, so as not to be overlooked when calls were put out by the carrier for men to fill jobs at various points. Some of the men from DeSoto were placed at St. Louis, Missouri, at Twenty-first Street and Rankin Track, however, the force was increased at Osawatomie, Kansas and while men had been set up there for some time, no call was put out, even though there were seven (7) jobs available which were filled by upgraded helpers. Some of the men from Sedalia, Missouri heard of these jobs and went to Osawatomie, were put to work displacing upgraded men; however, five (5) of these employees were junior men to the claimants and had

- (1) The claimants hold point seniority at DeSoto, Missouri, only;
- (2) Claimants hold no seniority rights at Osawatomie, Kansas;
- (3) Rule 23(a) is not applicable because men were **not needed** at Osawatomie after claimants became furloughed, February 28, 1958;
- (4) There is no agreement obligation, understanding or practice which obligates Carrier to search out men and offer them work at points where set-up men are working;
- (5) The three set-up men working at Osawatomie on March 1, 1958 were displaced by qualified carmen on March 5, 6 and 8, 1958; and
- (6) In no event would claim be warranted in behalf of more than three men, and these claims could not run beyond March 5, 6, and 8, date last three set-up men were displaced by mechanics at Osawatomie.

Without waiving in any manner whatsoever the position of the carrier that these claims are without merit for the reasons fully set forth above, in the event your Board should be persuaded that these claims have merit and should be sustained for any portion of the time claimed, said award should provide that the carrier shall have credit for other earnings of these claimants during such period in accordance with the rule, understanding and practice on this property.

There is no basis for these claims and they must therefore be denied.

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 claim is that Rule 23 was violated when forces were increased at Osawatomie, Kansas, on March 1, 1958, without a system call, thereby depriving Claimants of the opportunity to fill positions there.

There was in fact no increase of forces at Osawatomie. What happened was that helpers there had been temporarily upgraded under the Memorandum Agreement of December 7, 1953, and that furloughed carmen from Sedalia applied and were permitted to displace them.

The Rules prescribe point seniority. But Rule 23(a) provides that if, at any time while forces are reduced, "men are needed" at any point, men at other points who are out of the service because of force reduction "will be given preference to transfer" so as to fill the need, preference to be according to their point seniority.

The upgrading agreement also was adopted to make employees available

"where carmen are needed," and it was utilized to fill the need when it arose. At that time carmen were apparently not available under Rule 23, and when they became so the need no longer existed. Consequently Rule 23 did not apply. The parties might well make it applicable to the replacement of upgraded men as well as to the supplying of the need for men; but since they did not make it applicable to that circumstance this Board has no authority to do so.

There is an established practice by which carmen from one point are permitted to replace upgraded men at another point upon applying there. In 1948 the Chief Mechanical Officer supplied all Master Mechanics and Shop Superintendents in the Carrier's Western and Southern Districts with a list, by classifications, of upgraded men at various points, so that furloughed men desiring to transfer could obtain that information. But that was by unilateral action, and neither rule nor practice has established a contractual arrangement for the replacement of upgraded men by a system call or other system wide procedure.

Since forces were not increased at Osawatomie, and upgraded men were merely allowed to be replaced by carmen on application, pursuant to practice, and since the Agreement does not provide for a system call for the replacement of upgraded men, the claim must be denied.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1961.