

Award No. 3844
Docket No. 3488
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, at DeSoto, Missouri, when forces were increased without a system call being put out, thereby depriving Carman Earl Spellmeyer, hereinafter referred to as the Claimant, of the opportunity to fill the job at DeSoto, Missouri.

2. That accordingly the Carrier be ordered to compensate the Claimant, Earl Spellmeyer, eight (8) hours per day at the straight time rate for January 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 1958.

EMPLOYEES' STATEMENT OF FACTS: On October 31, 1957, forces were reduced in both the freight and passenger car shops at Sedalia, Missouri. While forces were partially restored on January 6, 1958, many carmen and coach carpenters were still furloughed. These furloughed employees received information that a program was about ready to start in the freight car building shops at DeSoto, Missouri—a fact which is substantiated by Chief Mechanical Officer Christy's letter of June 20, 1958, addressed to General Chairman W. H. Bond. Several of these furloughed employees, as well as members of the local committee, went to the office of the superintendent of shops at Sedalia, on various occasions, in an attempt to secure jobs at DeSoto for these furloughed carmen. The office of the general chairman was contacted by the local chairman and several individuals, and in order to expedite the situation the general chairman called Mr. H. S. Marsh, Superintendent of Car Department, and was advised that such a program was anticipated at DeSoto, but they did not know whether all carmen were as yet called back to work at that point.

Following the conversation with Mr. Marsh, General Chairman Bond called Superintendent Jett, at DeSoto, Missouri, and was advised that all his carmen were working and he did not have the authority to increase the force.

same consideration as the other two carmen who did go to DeSoto and applied for work.

Rule 23 has always been interpreted as set forth in detail in this submission. Men desiring to transfer have always been required to apply in person at the point where men are needed. The carrier has never undertaken to search out either the senior employe or any other individual and notify that individual of available work at other points. The carrier has agreed to cooperate with the representatives of the employes by making available information concerning the points where men are needed, but this action does not obligate the carrier under penalty of time claims for failure to get such information to furloughed men. Neither Rule 23 nor any other rule of the shop crafts agreement requires the carrier to notify an employe of work opportunities at points other than his home point where he holds seniority. Employes applying for work at the point where men are needed may transfer to such point under Rule 23 without losing their seniority at their home point. Such men are entitled to preference over men who have not acquired seniority at any point under the shop crafts agreement and are accorded priority among themselves in accordance with their length of service at their home point. There was no general force increase at DeSoto and claimant did not apply in person for work at DeSoto. The employment of the two carmen at DeSoto in accordance with the understanding between the local chairman and the superintendent did not deprive claimant of any rights to which he is entitled under the agreement. It follows that the 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 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 forces at DeSoto were increased by two carmen while forces were reduced at Sedalia. Rule 23 therefore applied. It provides without qualification or exception that under such circumstances furloughed employes will be given preference to transfer to the point where men are needed, "seniority to govern all cases." The provision can only mean that all carmen then on furlough are entitled to the opportunity in order of seniority.

Since this claim arose Rule 23 has been amended to specify the procedure by which it shall be given effect, so that this type of claim will not recur. But prior to the amendment the body of the rule conferred the same right, and in some manner it should have been given full effect.

The record shows that Claimant's seniority exceeded that of the employes who were allowed to transfer to DeSoto; but it does not show that he was then the senior furloughed carman desiring to make the transfer. If so, he was deprived of his right under Rule 23; otherwise he was not, for on a system call any of his furloughed seniors wanting the position would have taken it.

The case should be remanded to the property for ascertainment of the determinative seniority question and there disposed of in accordance with these findings.

AWARD

Case remanded for proceedings and disposition in accordance with findings.

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.