

Award No. 4112

Docket No. 3866

2-MP-CM-'63

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 under the current agreement other than a carman was improperly used to fill the position of Carman W. W. McDonald while he was off on his annual vacation during the period July 13, 1959 to July 31, 1959, inclusive, at Myrick, Missouri.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman M. C. Trainor in the amount of fifteen (15) eight (8) hour' work days at the applicable rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Myrick, Missouri is a point located about 38 miles from Kansas City, Missouri, on what is known as the River Route Freight Line running between Kansas City and St. Louis, Missouri. Since the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, employs only one car inspector at Myrick, Missouri, namely, Mr. W. W. McDonald, this point is termed a 'one-man' point.

On July 13, 1959, Carman W. W. McDonald started his annual three weeks' vacation, completing same on July 31, 1959. Mr. L. S. Schwartze, who holds seniority at Jefferson City, Missouri as a laborer was sent to Myrick to fill Mr. McDonald's job while he was on vacation. Mr. M. C. Trainor, hereinafter referred to as the claimant, was available and willing to fill this vacation vacancy had he known of its existence.

The general chairman received copy of Form 1595, putting out furloughed call for man to fill this three weeks' vacation at Myrick. After receiving copy of Form 1595 the general chairman, under date of July 10, 1959, wrote Chief Mechanical Officer, Mr. L. R. Christy, advising him of the error in putting out system call to fill job under the jurisdiction of Master Mechanic Dent.

Under date of August 24, 1959, Mr. Christy wrote General Chairman Bond stating that a laborer had been used to fill this vacation vacancy of Carman McDonald at Myrick.

of compensation in any respect. He was not entitled to the monetary allowance requested even under the employees theory concerning the alleged violation of the agreement.

For the foregoing reasons, the monetary claim on behalf of former Local Chairman Trainor must 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 record shows that no carman or other employe entitled to be upgraded to carman was available to fill the position of carman McDonald during his vacation, although the master mechanic canvassed his territory and then issued a system call. Laborer Schwartze was therefore used with the consent of the local committee, but upon the general chairman's objection the job was blanked for the last day of the vacation.

It is apparent that Rule 26(a) was violated by the use of other than a carman to fill a carman's position.

However, claimant Trainor was fully employed on regular assignment at his own home point at the same pay, and suffered no pecuniary loss. If anyone suffered monetary damage it was carman McDonald, whom under Article 5 of the Vacation Agreement of December 17, 1941, the carrier could have retained on the job in lieu of his vacation upon paying him as provided in that Agreement.

AWARD

Claim 1 is sustained.

Claim 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of February, 1963.

OPINION OF LABOR MEMBERS CONCURRING IN PART AND DISSENTING IN PART TO AWARD 4112

We concur with the finding that "Rule 26(a) was violated by the use of other than a carman to fill a carman's position" but cannot reconcile refusal to compensate the claimant carman for the violation.

The statement that "Laborer Schwartz was . . . used with the consent of the local committee, but upon the general chairman's objection the job was blanked for the last day of the vacation" is misleading. Work embraced within the scope of an agreement cannot be removed therefrom and assigned to an employe not subject to its terms. The local committee was without authority to agree to a violation of the schedule agreement and as soon as it came to the attention of the General Chairman that a laborer was being used to perform carman's work he objected and the laborer was removed from the job.

It is not a primary concern of this Division as to which carman payment is made because of the instant violation. The claim on behalf of any particular individual is only incidental thereto. The essence of the claim is the violation of the scope rule of the agreement. In order to enforce the provisions of the governing agreement the carrier should be required to comply therewith, and if the organization makes the claim in behalf of a certain employe covered by the agreement the carrier will be fully protected if it is required to pay such claim as it cannot again be required to do so; therefore, the present claimants should have been compensated as claimed.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink