Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7311
SECOND DIVISION Docket No. 7216
2-MP-CM-'77

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 117, 127 and Rule 26(a) as amended by Article III of the Agreement of September 25, 1964, when other than carman was used to repair train line on freight car at Osage City, Kansas, on February 19, 1975.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman L. B. Cottrell nine hours (9') at punitive rate to include one hour (1') preparatory time, three and one-half hours (3-1/2') traveling to Osage City, Kansas, one hour (1') performing the work and testing car and three and one-half hours (3-1/2') traveling to home point, Wichita, Kansas.

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 waived right of appearance at hearing thereon.

On February 19, 1975, working Foreman Manthes who was headquartered at Salina, Kansas traveled to Osage City to repair the train line on a car that had been set out bad order at that point. Claimant Carman, L. B. Cottrell, filed a claim for nine hours at the punitive rate on the basis that he was available for and entitled to the work performed at Osage City by working Foreman Manthes.

There is no question but that the work performed was Carman's work as set out in rule 117 "Carmen Classification of Work."

It is the position of the carrier that Foreman Manthes was entitled to perform the work by virtue of rule 26(a) as amended by Article III of the agreement of September 25, 1964. Those rules read as follows:

> "26(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."
>
> "Article III - Assignment of work - use of supervisors. None but mechanics or apprentices regularly employed as such shall do mechanics work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craftwork performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts or 60 hours for all shifts."

The employees contend that the word "point" as used in 26(a) and Article III relates to the place where the working foreman is headquartered and does not extend to locations over the road of the carrier. The employee's points to rule 127 which governs road work as being controlling.

> "Road Work: Rule 127. When necessary to repair cars on the road or away from the shops, carmen and helper when necessary, will be sent out to perform such work as putting in couplers, draft rods, draft timbers, arch bars, center pins, putting cars on center, turn rods and wheels and work of similar character."

The parties have each submitted awards of this Board in support of their positions. The carrier has submitted two awards rather directly on point (4601 and 7211). We have examined those awards and cannot come to any conclusion but that either there were facts present in those cases not present in this which influenced the decisions or that they are palpably in error. The language of the agreement is clear. The work in question has been contracted to the carman. Foremen are entitled to perform that work at points where no mechanic is employed. We do not believe that a reasonable interpretation of "points" includes the entire system of the carrier. The carrier's interpretation of the rule would not vest carmen's work in the carmen unless it was performed at a location where mechanics are employed. To read the rule as granting working foremen the right to do carmen's work over the system leads to a patently absurd result.

The carrier has alleged that the past practice in existence on the property substantiates its position. We do not find that the carrier has proved a past practice such as would sustain that allegation.

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A W A R D

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of July, 1977.