

The Second Division consisted of the regular members and in addition Referee David P. Twomey 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 violated the controlling agreement, particularly Rules 21, 23 and 25, when Carman Apprentice Ronald Deuschle, Sedalia, Missouri, was permitted to go to work at Omaha, Nebraska on February 25, 1975, when two carmen apprentices, including Carman Apprentice R. L. Lee, were furloughed at Omaha, Nebraska.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman Apprentice R. L. Lee in the amount of five (5) eight (8) hour' days per week at Carman's pro rata rate beginning March 4, 1975 and continuing until May 30, 1975.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Carman Apprentice Ronald Deuschle was employed by the Carrier at Sedalia, Missouri, on August 22, 1972, and was furloughed in a force reduction on January 19, 1975. On February 25, 1975, he was assigned to fill a temporary vacancy as a Set Up Carman Apprentice in Omaha, Nebraska, which is a different seniority point from his own. As a Set Up Carman Apprentice he worked as a journeyman Carman and received Carman's pay, but was not entitled to a seniority date until completion of his apprenticeship. As of February 25, 1975, there were 2 carmen apprentices furloughed at Omaha. One of them, Claimant R. L. Lee, was furloughed in a force reduction of January 8, 1975, after working some 60 days, having begun his apprenticeship in September of 1974.

The Organization contends that the Carrier violated Rules 21(c), 23(a) and 25(a) of the Agreement when it set up Mr. Dueschle in Omaha on February 25, 1975, and for the period of time he remained on the temporary vacancy, which was to May 30, 1975.

The Carrier contends that the claim is in violation of Rule 31(a) of the Agreement, the time limit rule. The Carrier contends that no rule of the Agreement was violated; and that it did all that it could do by filling the vacancy by using a qualified furloughed employee to perform Carman's duties, rather than an employee with a mere sixty days service as a Carman Apprentice.

Rule 31(a) states:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

Rule 31(d) states:

"(d) A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof...."

We are compelled to find that the instant claim is in violation of Rule 31(a) of the Agreement. The claim was filed on May 2, 1975. The date on which Mr. Deuschle first was set up in Omaha was February 25, 1975. The initial claim filed on May 2, 1975, stated in part:

"...therefore, when the Carrier arbitrarily transferred Carman Apprentice Deuschle to Omaha and set him up, they were in violation of Rules 21, 23 and 25 of the Agreement."

Clearly then the instant claim was based upon an event, the filling of the temporary vacancy in Omaha, which event took place on a clearly identifiable date, February 25, 1975. The February 25, 1975 date is more than 60 days prior to the date of the filing of the claim, that date being May 2, 1975. A great number of Awards of this Board have held that claims arising out of a singular event such as that which arose on February 25, 1975 in the instant case are not "continuous" in nature. We find that the time limit issue was properly joined on the property and properly pursued by the Carrier in its Submission. We must dismiss the claim.

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Award No. 7402
Docket No. 7243
2-MP-CM-'77

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of December, 1977.

