

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 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 25 and 13, when they permitted a set up apprentice from Sedalia, Missouri to come to Monroe, Louisisana on June 23, 1975, to fill a temporary vacancy which in reality did not exist.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman R. J. Wills in the amount of eight hours (8') at punitive rate covering period June 23, 24, 25, 26, 27 and 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 employe or employees 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.

Carman M. C. Jordan intended to take vacation during the month of June and retire at the end of the month. Upgraded carman apprentice R. E. Deuschle who had been furloughed at Sedalia, Missouri was assigned to report to Monroe to fill Carman Jordan's vacation vacancy.

Jordan elected to work through the month of June rather than take vacation. This meant that when Deuschle arrived at Monroe to report for work on June 21 there was no temporary vacancy for him to work. Rather than send Deuschle back to Sedalia for one week until Jordan retired at the end of June, the Carrier worked both Jordan and Deuschle on the claim dates.

The claimant alleges that the carrier violated the agreement, in that the job performed by Deuschle was a new job which should have been bulletined and the vacancy filled by proper procedure.

The Organization is technically correct in its argument that the carrier created and unilaterally filled a position. We understand the need of the organization to be vigilant in its policing of its Agreement. In the instant case, however, we find that the actions of the carrier, though not in strict accordance with the Agreement, were done with the best of intentions and with the welfare of their employee in mind. We further find that no damage occurred to claimant by carrier's action in this case. The wrong in this case is technical. We will find that a violation of the agreement existed, but that under the circumstances, an award for damages will not be.

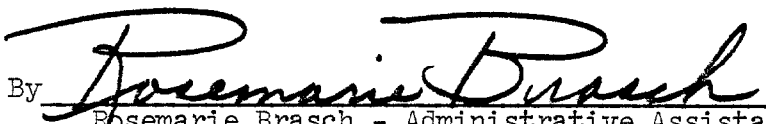
A W A R D

Claim sustained in accordance with the Findings.

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 10th day of February, 1978.