

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

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

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Section 1(a) of the Memorandum Agreement signed May 26, 1973 to be effective April 1, 1973, at Houston, Texas when they deprived Electrician Apprentice J. R. Benavides of his rights as provided for in the Memorandum Agreement.
2. That, accordingly, the Missouri Pacific Railroad Company be ordered to compensate Electrician Apprentice J. R. Benavides ninety-four cents (94¢) per hour, eight (8) hours per day for February 16, 1976 and continuing each and every day until the violation has been corrected.

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.

This is a claim requesting payment for the difference in earnings between the journeyman's rate and the electrician apprentice rate of pay commencing February 16 1976. The claim is based on the allegation that Carrier improperly set Claimant, an upgraded apprentice, back to his position as an apprentice. The Organization argues that inasmuch as Carrier never posted a notice of force reduction concerning the abolishment of one (1) journeyman's position pursuant to Rule 21(b) and Article III of the June 5, 1962 National Agreement, Claimant's journeyman's position still existed and Claimant was wrongfully deprived of working it.

We have no quarrel with Carrier's arguments that under May 26, 1973 Upgrading Agreement, it is Carrier's prerogative to determine if apprentices or others should be upgraded, and we have no quarrel with this argument insofar as it applies to the reverse situation; to wit, a reduction in the number of journeymen positions which necessitates setting back apprentices who have been so upgraded. The problem here, however, is that to set Claimant back from a journeyman to an apprentice required a force reduction of one (1) journeyman. Under the controlling provisions of the agreement cited supra, Carrier is obligated to give five (5) days' notice of abolishment of a position or a force reduction, which it failed to do in this case. We do find however, that two weeks later, on March 1, Carrier did post a force reduction notice to be effective March 5, abolishing the journeyman's position which Claimant had occupied. Accordingly, we will sustain this claim for the difference in earnings (94 cents per hour) between February 16 and March 5, when the force reduction notice given pursuant to the agreement became effective.

A W A R D

Claim sustained to the extent indicated in the findings.

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 25th day of October, 1978.