

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { August C. Kapor  
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{  
{ Merchants Despatch Transportation Corporation

Dispute: Claim of Employees:

The Charges of Discrimination are as Follows:

1. In May 1974, I was told by Mr. Don Manger that I had no rights in the Exercise of my SENIORITY, and that no one has that right, yet your statement was, That any man qualified to do the work, the Job was solely his. Yet I was told that I was to do everything, because we are all carmen, Also in letting a few men refuse to do the work that was assigned to me. After their REFUSAL.

2. WORKING Conditions:

Mr. Don Manger I had called you on two different occasions and tried to explain, and to try and find out, Why Mr. Robinson, and Mr. Emerson were Refusing me help when I needed it (ALL of my injuries were caused and do to the respect of not giving me the help needed to perform my work safely) I was told many a time that if I couldn't do the work, I could be sent home and dismissed or that I should Quit.

3. In your or the company Rule Book dated, and effective Sept. 1, 1951 Rules and Working Conditions,

Rule 79, Protection for Repairmen!

On Sept. 29, 1975 I was told by Mr. Emerson to work on a car M.D.T. 11995 on track 8, in which time on this day this track was set up to be switched, I was told that I would not have to worry for the switch Engine was not going to come to the car that I was working on, (He Mr. Emerson said that the Engine was not going to come on this side of the crossing, North of the crossing in which car I was to work on which was 3 cars from that crossing.)

On January 20, 1976, I had asked Mr. Emerson for the use of the crane to pick up the sheets of steel so that we could place them in place to be bolted down on the floor. This action and my request for assistance was completely denied, (His remark Mr. Emerson's was that the crane was busy, but yet the crane went right over to another car where Joe and Charlie Jones were working

and helped them with the lifting of the same sheets,) after trying to pull a few sheets by myself, I went over to Jim Beans and asked him to come over and give me a hand with the crane, I had told Him what Mr. Emerson said. From this stupid action I had lost approx. 50 working days.

#### Rule 9, Filling Vacancies or new Positions

Every Job was and I Quote Mr. Robinson, and Mr. Emerson these men that I promote are Qualified, never was a job put on the bulletin board for bids by any one else.

I once questioned this action, and was told right out if I didn't like it I should Quit.

When I returned to work, after the 1967 layoff, I was found by the company Doctor at Hennings Medical Center, to be Diabetic, the company at that time wasn't sure that they would accept me, I was grateful at that time because I enjoy rebuilding and building for this is my trade, along with returning to work a BLUE slip was issued to me by the company Doctor, stating that I could perform my work as long as it was not hazardous to my health.

In seeking help this matter of the BLUE slip was always thrown up to me, (Mr. Minger said if you can't do the work you can be let go or as Mr. Robinson and Mr. Emerson would say, that the Disease was all in my head.)

#### Rule 13 and 14

Absence from work and Recognition of long and Faithful Service.

In trying to exercise these Rules, the Rules were completely ignored by the Supervisory Staff, as stated before up until Dec. 1976 when I was refused 3 weeks vacation by the company because your hidden agreement with the union says some thing else.

The Union Pres. of our Local told me that as long as I had 70 working days in, I was entitled to the 3 wks., as long as I returned to work after the layoff that those years counted too.

#### Rule 17. Reduction of force.

Leo Oyervides was in a different craft and at a higher pay than the carmen, his job was abolished in 1968, and returned to a carmen's position and never as stated in this rule replaced a Junion employee instead maintained his seniority over the men who were and had to serve their apprentices as carmen, In the 1967 layoff T. Douglas was a four year carmen, when he went over to

the paint shop he lost his seniority as a carmen, Mr. Robinson told everybody that once you bid on a job and you go from one craft to another you lose your seniority in the craft you left, and if you decide to come back, you then go to the bottom of the list as a new man.

Rule 26. The company will not discriminate against any committee man, who from time to time represents other employees.

On two occasions Mr. Emerson had told me as long as this man does not want to do that work, then you will have to do it, this is were these men told Mr. Emerson that if Gus wouldn't do it then they would refuse it.

Rule 29. Apprentice Ratio and Conditions of Service.

I had questioned this matter when trying to receive help how come you have two apprentices working together, the remark was the same you don't run this shop and if you don't like it "quit".

Also their remark was that as long as I'm the boss, you do what I say also the men told me that they didn't want to work with you, but when I was told to go and help them, the same remarks were then a little different and more as if they were begging you.

Rule 34. Protection of employees

In 1963 or 64 I was shot at while working in the yard and reported this incident to Mr. Robinson, who in turn told me that as long as I was not hurt don't worry about it, so at that time I went and told Mr. Hreno, our union rep. and he told me that he went and told Mr. Robinson and his remark was the same, until Mr. Don Munger told him that that was his duties to report these matters.

In 1971 I was working on the last car on track 7 on the south end this was in Nov. there were hunters out in the field and a shot rang over my head, I went directly to Mr. Robinson and told him of this matter and his remark was that all I was was a trouble maker, His remark was the same as before, YOU DIDN'T GET HURT then what the hell are you trying to prove, I had told him that I was not about to be shot, I was going to go home. His remark was that if you do you can consider yourself Fired.

In 1974 one man was aloud to bring beer and whiskey on the premises and after they drank the contents they would then break the bottles all over the place, this matter was brought up to

Mr. Emerson he told me that there was nothing that he could do about it, and then turned right around and went over and told the man that was doing this, in turn he came at me drunk and started to give me a bad time, during this argument Mr. Emerson was standing by the air break shanty watching the whole incident.

Now under the Con Rails Supervision I am still denied the right in exercising my seniority. According to the shops records and they show that Leo Oyervides was set back to carmen in July 15, 1968 to carmen. My four years were made in Oct. 30, 1964.

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 were given due notice of hearing thereon.

Our review of the record, including grievant's lengthy testimony presented at the hearing, clearly establishes that this dispute has not been handled in the usual manner on the property as required by Section 3 First (1) of the Railway Labor Act, as amended; nor was the grievance filed and progressed in accordance with the provisions of Rule 24 - Grievances while on the property.

Even if this Division could somehow overcome this fatal jurisdictional defect and consider the asserted complaints on their merits, we would of necessity, be, compelled to conclude that the seniority issue, the vacation issue and the alleged discrimination issue are without proper standing since there is no probative evidence in the record to substantiate any of the alleged violations.

We are certainly mindful of claimant's genuine concern to resolve equitably his perceived grievances, but there is no tangible evidence to support his claim or more importantly appropriate procedural authority to consider it within the meaning and intent of the Railway Labor Act.

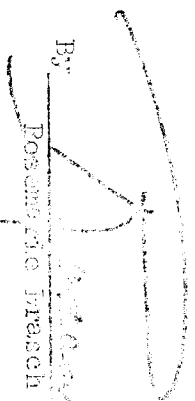
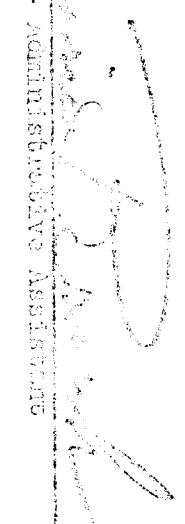
We must deny this case in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By    
Rosamundo Frasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of January, 1979.