

The Second Division consisted of the regular members and in addition Referee James F. Scarce 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 Rules 8(b), 26(a), 30, and 117 of the Controlling Agreement and Letter of Understanding of February 14, 1952 when they arbitrarily permitted Carman L. W. Wise to fill a Car Foreman's job and work his own job as a Carman, June 4, 1976.
- (2) That the Missouri Pacific Railroad Company be ordered to compensate Carman J. L. Wilcox in the amount of eight (8) hours at the punitive rate for June 4, 1976.

### 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.

The question raised in this dispute is whether a carman, who had been assigned to cover the duties of a carman foreman, who was absent due to illness, was obliged to adhere to such supervisor's rest days, etc. In this case, the carman who was performing such duties was utilized as a carman -- at straight time, on the foreman's regular day, after completing a week in the supervisor's position. Thus, he worked 48 hours that week at straight time for foreman (40 hours) and carman (8 hours). The Claimant, also a carman, was available for work on that same day -- on his rest days, at the overtime rate. While arguments were advanced about the applicability of certain rules, the focal point of dispute goes to a Memorandum of Agreement, applicable to carmen, executed in 1954 which prohibited employees who are selected to relieve foremen (who were) ABSENT ON VACATION (such words fully capped in the Memorandum) to their own position until they have taken the rest day of the Foreman's position.

While there might be substance to the Carrier's contention that the rules cited by the Organization might not be precisely on point, we find its rationale to justify its actions, i.e. differentiating foremen on vacation from those on illness insufficient basis to justify assignment of the carmen -- at straight time, to work in that classification after fulfilling a regular assignment at the foreman level. We shall not order pay at the punitive rate for the Claimant, but do so at the straight rate for work performed on June 4, 1976, as referenced in this case.

A W A R D

Claim is sustained to the extent set out 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 8th day of August, 1979.