

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.
((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 Apprentices L. N. Hill and G. K. Withrow their rights as provided for in the Memorandum Agreement.
2. That, accordingly, Carrier be ordered to compensate each Electrician Apprentices L. N. Hill and G. K. Withrow in the amount of full Journeyman pay, per hour, eight hours per day for July 7, 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.

The record of this case is most confusing but it is obvious that the facts are in dispute. The organization alleges that the Carrier promoted two electricians (C. R. Cot and H. G. Tuttle) to foreman and failed to fill the positions with the then apprentice Claimants as they allege is required by the Agreement.

The claimants base their claims on Rule 34 of the Memorandum Agreement of April 1, 1973 and Section 1(a) of the Memorandum of Agreement of May 26, 1973:

Rule 34

"(c) Electrician Apprentice shall serve 976 working days. This training shall be divided into eight (8) periods of 122, eight (8) hour days. If the Carrier's complement of Journeymen is not full, they will automatically be upgraded in seniority order to fill these positions after 732 eight (8) hour days of service and will be paid the Journeymen's rate of pay while upgraded."

"Section 1. (a) When Electricians are needed, regular apprentices employed at the point where the need exists who have served 488 days or more of actual service of their apprenticeship will be advanced."

The Carrier takes the position that only electrician Cox was promoted to foreman and that electrician Hill merely filled some temporary foreman vacancies and ultimately returned to his job.

In order for Claimants to prevail they must show that either (1) the carrier's complement of journeymen was not full and that they possessed the requisite 732 days of service or (2) that electricians were needed and that they served at least 488 days of their apprenticeship.

For the Carrier's complement to be not full there must be a permanent vacancy in the number of authorized positions. The Carrier is the sole determinant of the size of its complement but can only reduce same by bulletin.

As we stated above, the record of the handling on the property is somewhat confusing. However, from a thorough examination of that record we have come to the following conclusions: When Electrician Cox was promoted and transferred to Corpus Christi on July 13, 1976 a permanent vacancy existed in the Carrier's complement of electricians at Houston. Claimant Hill who had more than 732 days of service had a right to be automatically upgraded to fill the vacant position. We are unable to find in the record sufficient evidence to substantiate the claimant's assertion that a second vacancy existed.

Claimant Hill is entitled to be paid the difference between his apprentice rate and the journeyman rate for the period from July 13, 1976 until he began receiving pay at the journeyman rate. We are unable to find for claimants in any other respect.

A W A R D

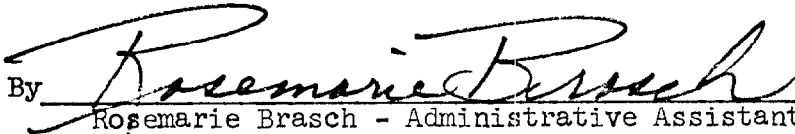
Claim sustained for claimant Hill in accordance with these findings and claim denied as to claimant Withrow.

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Award No. 8088
Docket No. 7734
2-MP-EW-'79

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 27th day of September, 1979.