

The Second Division consisted of the regular members and in addition Referee George S. Roukis 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 117, 127, and 26(a), as amended by Article III of the Agreement of September 25, 1964, when other than carmen were used to repair train lines of freight cars RTTX 911985 and SP 515648 at Council Grove, Kansas, August 10, 1977.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman M. Stang six (6) hours at the punitive rate to include one (1) hour preparatory time, two (2) hours traveling to Council Grove, Kansas, one (1) hour to perform the work necessary, and two (2) hours traveling to home point, Wichita, Kansas.

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 waived right of appearance at hearing thereon.

This Board takes judicial notice of the factual similarities between this dispute and Second Division Awards 4601, 7311, 7312 and 8051.

In Award 7311, involving the same parties, we held that, "The language of the agreement is clear. The work in question has been contracted to the carman. Foreman are entitled to perform that work at points where no mechanic is employed. We do not believe that a reasonable interpretation of 'points' includes the entire system of the carrier. The carrier's interpretation of the rule would not vest carmen's work in the carmen unless it was performed at a location where mechanics are employed. To read the rule as granting working foreman the right to do carmen's work over the

system leads to a patently absurd result. The carrier has alleged that the past practice in existence on the property substantiates its position. We do not find that the carrier has proved a past practice such as would sustain that allegation."

In a more recent Award involving analogous conditions, we held that a "point is a specific geographical location where a foreman is employed and not over the line of road." In the instant dispute, the foreman was employed at Wichita, Kansas, not Council Grove.

The pivotal question that naturally arises in this case, is whether or not a well defined past practice existed on this property. Unlike Second Division Award 7311, wherein we recognized that claimant conceded that foremen "performed in similar circumstances", the employe organization herein vehemently and consistently challenged this assertion. Accordingly, after carefully reviewing the documentary evidence adduced by carrier to verify the existence of a past practice, we must conclude that it falls short of proving that a system wide practice existed. The affirmations provided by carrier pertain to four (4) out of the eleven (11) states carrier operates in and is not indicative of a system wide practice.

In Second Division Award 6438, we stated, in pertinent part, that "with respect to the past practice argument raised by the carrier, it is well established that a practice which is consistent, of long standing, is mutually acceptable, and is not contrary to the Agreement should govern. In this case the practice is not consistently followed throughout the carrier's operations."

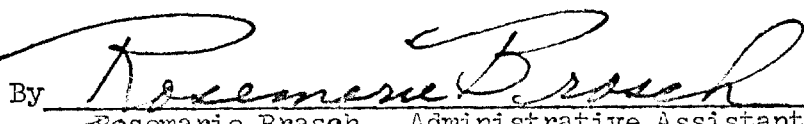
We believe this principle is directly applicable to the fact specifics herein. Claimant should have been called to perform the contested work and we will sustain the claim at the straight time rate.

A W A R D

Claim sustained in accordance with these 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 27th day of September, 1979.