

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen of the United States
(and Canada
(
(St. Louis Southwestern Railway Company

DISPUTE: CLAIM OF EMPLOYES:

1. That the St. Louis Southwestern Railway Company violated the controlling agreement and the Railway Labor Act when it failed to employ Carman R. L. Smith on August 1, 1980, at Hutchinson, Kansas.
2. That the St. Louis Southwestern Railway Company violated the provisions of the March 4, 1980 Agreement and the Memorandum of Agreement dated June 10, 1980.
3. That accordingly the St. Louis Southwestern Railway Company be required to pay Claimant R. L. Smith the daily wages due and credit same on a daily basis in order to credit Railroad Retirement, Travelers, unemployment and sickness credits, vacation credits, all overtime wrongfully denied, and any and all other contractual benefits not specifically mentioned, commencing August 1, 1980 and continuing specifically for each and every day that the Carman's job at Hutchinson, Kansas is occupied or worked by any Carman who was not called from the roster of former Rock Island Carmen at Hutchinson, 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 employe or employes involved in this dispute are respectively carrier and employes 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.

After the Carrier purchased and started to operate over portions of the former Rock Island right of way, the Carrier established two carmen positions at Hutchinson, Kansas. To fill the positions, the Carrier hired the two most senior carmen on the Hutchinson Rock Island seniority roster. Shortly thereafter, on or about July 25, 1980, one of the former Rock Island carmen hired at Hutchinson resigned. The Carrier advertised the vacancy position and, on July 31, 1980, awarded the position to Carman S. E. Piper. Carman Piper, who was a former Rock Island employe, had been assigned to a carman's position at Herington, Kansas. By special agreement, Piper had been accorded a journeyman seniority date of March 24, 1980 (representing his date of hire at Herington). Piper's position at Herington had been abolished on July 22, 1980. The record discloses that the carman's position at Hutchinson which Piper occupied beginning on August 1, 1980 was abolished on October 3, 1980. Claimant was on the former Rock Island seniority roster and held seniority as a carman at Hutchinson.

The Carrier submits that since Carman Piper was a furloughed employe at the time the Hutchinson vacancy arose, he could properly transfer to Hutchinson pursuant to Rule 19 of the scheduled Agreement. Claimant contends that, as a former employe of the Rock Island at Hutchinson, the Carrier should have hired him to fill the position vacated by a former Rock Island employe.

This dispute is governed by the March 4, 1980 National Labor Protective Agreement and the June 10, 1980 Memorandum of Agreement on this property. This Board has jurisdiction over the case, since the parties specifically agreed to resolve disputes concerning the potential employment rights of former Rock Island employes by utilizing the provisions of the Railway Labor Act. Article 2, Section 3 of the March 4, 1980 Agreement gives preferential hiring rights, in seniority order, to former Rock Island workers. Section 2 of the June 10, 1980 Agreement expressly contemplates the hiring of additional carmen from the Rock Island seniority roster to carry out the terms of the March 4, 1980 Agreement. Thus, Claimant should have been given an opportunity to fill the vacancy at Hutchinson on August 1, 1980.

Claimant is entitled to eight hours of pay at the straight time rate (in effect in 1980) for each day Carman Piper worked at Hutchinson during the period from August 1, 1980 to October 3, 1980. Claimant's request for overtime pay and other retroactive benefits is denied. Any unemployment compensation or outside earnings which Claimant received during the period specified above should be deducted from the back pay award.

A W A R D

Claim sustained to the extent consistent with our Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December, 1983