

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: ((Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 21 (a) and Agreement of November 1, 1973, as Amended October 4, 1979, when they refused to allow Carman C. E. Johnson's return to his A.R.T. prior rights position March 3, 1980.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman C. E. Johnson in the amount of eight (8) hours per day at the pro rata rate starting March 3, 1980 and continuing until 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 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.

In 1974, Carrier purchased the Freight Car Repair Shop at Barton Street from the American Refrigerator Transit Company. Under the terms of the purchase, the seniority of carmen formerly employed by ART was consolidated with the seniority of carmen at the St. Louis Terminal. ART were given prior rights to the work formerly performed in the Barton Street Shop on ART cars.

Claimant, C. E. Johnson, was employed by ART at the time of the purchase of the shop and consolidation of seniority. He was given prior rights to ART work.

Effective January 1, 1980, force reductions were made at all of the Freight Car Shops on the system as well as in other departments. At the Barton Street Shop, all general freight car repair jobs were abolished. As a result, an equivalent number of junior carmen were furloughed. Train yard and repair track jobs were not effected. Claimant's job, which he held because of his prior rights, was one of those abolished effective December 31, 1979.

Because of his seniority on the consolidated list, Claimant was able to displace junior employes with no prior rights. From January 1, 1981, until the force was restored, Claimant worked on the repair track on the second shift.

On February 29, 1980, notices were sent to the furloughed employees advising them of the restoration of the force in accordance with Rule 21 (c). Rule 21 (c), in relevant part, states:

"REDUCTION OF FORCES: Rule 21 (c)

In the restoration of forces senior laid-off men will be given preference in returning to service, if available within fifteen (15) days, and shall be returned to their former positions if possible. In individual cases time limit may be extended by mutual agreement between local committees and local officials. To receive consideration under this rule men affected must leave their names and addresses and also change of addresses with the local supervisor and local committee."

Certain employes in the Mechanical Department at Barton Street were permitted to return to work on March 3, 1980 or as soon thereafter that they wished. Each day carmen returned to work. As they arrived they were given work to perform. They were not placed in permanent jobs.

In the interim, bulletins were posted for the positions abolished as of December 31, 1979. The bulletins expired on March 10, 1980.

Claimant put in a bid for his former position. Bids were closed on March 10, 1980. On March 11, 1980 Carrier determined the senior bidder as well as applying the terms of Rule 21 (c).

Claimant was the successful bidder for his former position. He, like all other carmen, were directed to report to the jobs they had bid at the beginning of shifts on Wednesday, March 12, 1980.

The Organization contends that Carrier violated Rule 21 (c) by not allowing Claimant to return to his former position on March 3, 1980. Apparently, the Organization believes that Claimant's rights were violated because other carmen without prior ART rights returned to Barton Street before Claimant. It asks that Claimant be compensated eight hours per day at the pro rata rate from March 3, 1980 until March 12, 1980.

This claim is without merit. There is no basis for the argument that Claimant's rights were violated.

First, Rule 21 (c) allows fifteen days for carmen to determine whether they wish to return to Carrier's employ. Rather than wait the full fifteen days or wait until the deadline for the bulletin, thereby causing further hardships to furloughed employes, Carrier returned them to work as soon as possible after March 3rd. These men did not work in their regular jobs until March 12th. They, like Claimant, were not given the job of their choice until March 12th.

Second, there is no obligation for Carrier to place an employe on a position that he bid prior to the close of the bid. Claimant was permitted to be placed in his former position as soon as possible after the closing of the bid.

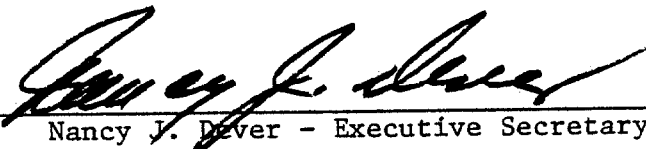
Third, and perhaps most important, Claimant was employed, without any loss of compensation, from March 3rd through March 11. Car repairers on general freight car repairs receive the same rate of pay as car repairers on the repair track. Thus, the "delay" caused no financial loss to Claimant either.

For all of the foregoing, the claim is denied in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March, 1984.