

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

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

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 13 (a) & (d), 25 and 32 of the controlling Agreement in withholding and disqualifying Carman W. A. Dickerman from the job of Locomotive Carpenter at Barton Street Shop, St. Louis, Missouri.
2. That the Missouri Pacific Railroad Company be ordered to restore Carman W. A. Dickerman to the job of Locomotive Carpenter and compensate him for all wage loss starting March 9, 1981 and continuing until violation is corrected.
3. That the Missouri Pacific Railroad Company violated Rule 31 time limits when Chief Mechanical Officer, Mr. D. M. Tutko, failed to respond to employe appeal dated August 10, 1981. Claim must be allowed as presented.

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.

On July 7, 1980, the Claimant was assigned the job of Locomotive Carpenter at the Carrier's Barton Street Shop in St. Louis, Missouri after having successfully bid on the job. The Carrier disqualified him from the position on March 4, 1981 and again on August 7, 1981.

Relying upon Rule 31 (a), both parties have raised procedural issues, with the Organization contending that the claim is to be allowed as presented because the Carrier failed to respond to its appeal dated August 10, 1981; and the Carrier contending that the claim is barred because it was not filed within sixty (60) days from the date of the occurrence on which the claim is based. The Board is of the view that the dispute can be disposed of on its merits and accordingly it is unnecessary to resolve the procedural issues raised by the parties.

Turning to the merits, the record warrants the conclusion that the Carrier disqualified the Claimant from the Locomotive Carpenter job because he was not physically qualified to perform all of the duties of the position. The description of the job, namely, "Business Cars and elsewhere as needed" is sufficiently broad to encompass the duty of spray painting with polyurethane paint which is utilized for the necessary upkeep and maintenance of business cars. Indeed, an employe must be able to perform all of the duties of a position "including the occasional and unusual." See Third Division Award No. 14173.

Despite the use of an OSHA-approved respirator provided by the Carrier, the Claimant became ill on February 19, 1981 while painting a business car with polyurethane paint. Between February 19 and March 2, 1981, the Claimant was under the care of Dr. Guerra, who was listed among the Company Medical Officers authorized by the Carrier to treat employes for on-the-job injuries. On March 4, the Claimant returned to work with a letter from Dr. Guerra, in which he stated that the Claimant "is not able to spray paint with polyurethane paint." Thus, the Carrier had a reasonable basis for disqualifying the Claimant from the Locomotive Carpenter job for physical or medical reasons.

On May 22, 1981, the Claimant was permitted to return to the job of Locomotive Carpenter without being required to paint, after Dr. Guerra wrote that the Claimant is released to work without restriction, "if", the Carrier provided him "with proper instructions in the use of polyurethane paint and adequate respiratory equipment for his use while painting with polyurethane paint." By reason of a Material Safety Data Sheet issued by the Department of Labor concerning the activator chemical found in the Carrier's polyurethane paint, the Carrier was advised that "allergy prone individuals may be sensitized and should not be exposed to isocyanates." As a result, on August 7, 1981, the Claimant was again disqualified from the job for physical or medical reasons.

No Rule, award or practice has been drawn to the Board's attention which requires the Carrier to purchase special respiration equipment for the claimant's use, due to his sensitivity to polyurethane paint. The Carrier demonstrated its good faith by furnishing the Claimant with OSHA-approved equipment which safeguards the ordinary occupant from the safety risks involved in utilizing polyurethane paint. The Carrier is not required to incur additional costs to obtain equipment which is necessitated by the Claimant's sensitivity or special vulnerability, rather than by the job itself. Furthermore, in light of the Claimant's sensitivity, the protective equipment which the Carrier possessed would not have adequately safeguarded him while painting with polyurethane paint. Accordingly, the Board finds that the disqualification of the Claimant by the Carrier had a reasonable basis and was not arbitrary.

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Award No. 9965  
Docket No. 9980  
2-MP-CM-'84

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 13th day of June, 1984