

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon 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, 25 and 26(a) of the Agreement of June 1, 1960 and Article 5 of the Agreement of September 25, 1964 when they arbitrarily used a Shop Laborer to perform work of the Carman's Craft at Corpus Christi, Texas, May 31, June 1, 2, 3 and 4, 1979.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman J. Isassi for eight (8) hours at the punitive rate for violation of May 31, 1979. Carmen G. V. Acuna for eight (8) hours at the punitive rate for the violation of June 1, 1979. Carman T. Salaza, Jr. for eight (8) hours at the punitive rate for the violation of June 2, 1979. Carman O. Trevino for sixteen (16) hours at the punitive rate for the violation of June 3 and 4, 1979.

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.

The facts in this case are relatively undisputed. On May 31, 1979, during the month of June and during the first eight days of July, the Diesel Supervisor employed by the Carrier at Harlingen, Texas was on vacation. The Carrier, in order to fill this vacancy promoted Carman, G. Brambilia. His promotion to the vacancy at Harlingen left a vacancy at Corpus Christi, his point of employment. To fill this vacancy, the Carrier used a laborer, Joe Delapaz, who is a member of the Fireman and Oiler Craft.

The Claim basically protests the use of Delapaz and the failure of the Carrier to bulletin Brambilia's vacancy. The Organization cites a variety of rules they contend were violated however most pertinent here is Rule 13 (a), (b), and (c) which state as follows:

"Rule 13. (a) New jobs created and vacancies in the respective crafts will be bulletined and the oldest employes in point of service shall, if sufficient ability is shown by fair trial, be given preference in filling.

NOTE: The exercising of seniority to displace junior employes usually termed rolling or bumping will not be permitted.

(b) Bulletins must be posted five (5) days before vacancies are filled permanently. Employes desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the local Chairman. Assignments will be promptly made and assignment notice will be posted within five (5) days following closing time for acceptance of bids.

(c) Vacancies, except vacation vacancies, known to be of fifteen (15) days or more duration will, if the vacancy is to be filled, be advertised as 'temporary vacancies' in the manner prescribed in (b) of this Rule 13. A vacancy created by assignment of an employe to a temporary vacancy will not be advertised as a temporary vacancy, but the bulletin will show the reason for the vacancy. When the employe creating a temporary vacancy returns, he will assume his regular assignment, and the employe or employes who have moved up by reason of his absence will be required to displace on the position to which previously assigned if the same is still in existence. Employes assigned to temporary vacancies will be subject to displacement by senior man who has displacement rights."

The Board, after a review of the competing contentions, concludes the Carrier violated the clear provisions of Rule 13 when they failed to post a bulletin to the Carmen giving them the opportunity to fill such assignment as guaranteed by Rule 13.


The Parties also proffer argument on the appropriate remedy. It is the Board's conclusion that under these unique and narrow circumstances the monetary remedy requested is unwarranted and inappropriate. This is for two reasons. It is noted first and foremost that the Employes identified four separate Claimants covering separate dates of the vacancy. This is improper inasmuch as the opportunity to the position under Rule 13 would accrue only to one employe, i.e. the senior bidder. Thus, only one employe could potentially be damaged and only one employe would be entitled to occupy the position had it been posted properly. Second, all the Claimants were employed at the time of the Claim and the work did not involve any additional work opportunities. In summary, while the Carrier violated Rule 13 and is directed to bulletin such vacancies in the future, there is no monetary remedy appropriate.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1984.