

The Second Division consisted of the regular members and in addition Referee Jonathan Klein 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 12(a) of the controlling agreement, November 24, 1982 when they refused to assign senior bidder, Carman R. T. Johnson to Bulletin No. 142.

2. That the Missouri Pacific Railroad Company be ordered to:

- (a) Allow Carman Johnson compensation for any junior Carman sent out in wrecker service from November 24, 1982 until violation is corrected; with him being assigned this job.
- (b) That Carman Johnson be allowed eight (8) and one-half (8 1/2) at the punitive rate for December 9, 1982.
- (c) That Carman Johnson be allowed twelve (12) hours at the punitive rate for December 14, 1982.

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 November 24, 1982, Carrier bulletined one temporary job as a member of a wrecking crew operating from its train yard and repair facility at Fort Worth, Texas. The Claimant, who normally worked the job of caboose

repair on the third shift, was senior to the Carman who was assigned the bulletined position. The Organization maintains the Carrier violated Rule 12(a) of the Agreement by this assignment. Rule 12(a) states in pertinent part:

"RULE 12. FILLING NEW POSITIONS OR VACANCIES

(a) New jobs created and vacancies 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".

Rule 104(a) of the Agreement specifically addresses the composition of wrecking crews, and states:

"RULE 104. WRECKING CREWS

(a) Regularly assigned wrecking crews will be composed of Carmen and helpers and where sufficient men are available preference will be given to those employes assigned to the repair track on the first shift, second shift and third shift in that order, and will be paid for such service under Rule 7, except that the proper officer may select wrecking engineers from any class of mechanics in service giving preference to mechanics employed as carmen. Meals and lodging will be provided by the Company while crews are on duty in wrecking service".
(Emphasis supplied).

In Second Division Award No. 10632, involving the same parties to this dispute, the Organization contended that the Carrier had to fill a position of Wrecker Engineer in accordance with Rule 12, rather than Rule 104(a). The Board approved the Carrier's appointment to a bulletined position of a less Senior Carmen based upon the junior man's experience and knowledge. The Board held that "Rule 104(a) being a specific Rule, it would properly take precedence over general rules pertaining to the filling of positions. The position here involved was filled in accordance with the specific provisions of Rule 104(a)". The Board finds that it is Rule 104, rather than Rule 12, which controls the instant dispute.

The application of Rule 104(a) to the facts before the Board turns on the meaning of "repair track". The Organization argued on the property that Claimant's work on the caboose track qualified as repair track activity. As support for this contention the Organization argued that both caboose track and repair track activities use the same designated function code.

The Carrier in defense of its actions maintains that the repair track is a specialized area designated for freight repair which has never included the caboose track. The Carrier's explanation on the property, never refuted by the Organization, is as follows:

"The language 'the repair track' is a term of art. It has never before been used to include what is commonly referred to as 'the caboose track'." It may well be that minor repairs are made to cabooses on the caboose track, but then minor repairs may be made in the train yards and on line of road. The fact that repairs may be made at these locations does not make these locations 'repair tracks' or 'rip tracks' as those terms are used in the industry.

The purpose of giving preference to employes working on the repair track was to provide a large pool of employes familiar with freight car structure, damage and repair. Most derailments do not even involve cabooses, and, compared to the number of employes working on rip tracks, the number of carmen working on the caboose track at most locations is quite small."

Aside from the function code, the Organization has made no showing that the caboose track has ever been treated or considered by the parties to fall within the meaning of "repair track." Assuming, arguendo, that Claimant's work on the caboose track constituted "repair track" work, Rule 104(a) specifies that the order of preference in the composition of wrecking crews where sufficient men are available is given to those employees on "... the first shift, second shift and third shift in that order"

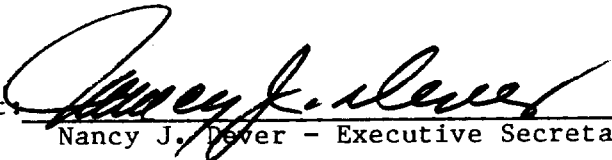
The Board finds that the Organization has failed to meet its burden of proof that Claimant's work on the caboose track is a repair track assignment within the meaning of Rule 104(a).

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 28th day of May 1986.