

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 the controlling Agreement when Carmen holding seniority at McGehee, Arkansas performed carman craft work at Monroe, Louisiana, in place of carmen holding seniority at Monroe, Louisiana, December 21, 1982.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen R. J. Wills and O. L. Howard in the amount of six (6) hours each at the punitive rate.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 December 21, 1982, Claimants were employed at the Carrier's train yard and repair point located at Monroe, Louisiana, an outlying point to the home point known as McGehee, Arkansas. On that date, the Carrier called two Carmen who held seniority at McGehee and assigned them to perform repairs on the first shift to a backlog of bad-ordered cars located at Monroe.

The Claimants' request that an award of compensation issue based upon their original point seniority at Monroe, Louisiana, and the fact they were never called to perform the disputed repair work pursuant to Rules 24 and 117. Rule 24 states in pertinent part:

"(a) Seniority of employees in each craft covered by this Agreement shall be confined to the point and seniority subdivision employed."

Rule 117 provides, in pertinent part:

"(c) Seniority will be acquired at one-man points and at outlying points when men are regularly assigned to positions at such points and their seniority will be confined to that point. Men who bid for and are assigned to one-man points or outlying points, using their seniority at their home point, will retain seniority at the home point but may not return to the home point and exercise seniority unless they are no longer able to hold a regular assignment at the one-man point or outlying point, and when seniority is exercised at the home point, they will no longer hold seniority at the one-man point or outlying point."

There are unrefuted allegations by the Carrier in the record that the Claimants had removed their names from the Overtime Board at Monroe prior to December 21, 1982, and had refused calls for overtime in the past. Of the two Carman listed on the Monroe Overtime Board, one Carman had laid off and the remaining employee refused to work overtime. Of the five regularly assigned Carman employed at Monroe, one of the five was laying off, and another (Claimant Howard) was on vacation. Claimant Wills worked and was paid for his regular first shift Carman assignment on the date the Claim accrued.

For a reason never established in the record, a significant backlog of bad-ordered cars had developed at Monroe, and to use the Carrier's expression, "time was of the essence" for making the necessary repairs. The operational needs of the Carrier, unrebutted by the Organization, dictated that this backlog of cars at Monroe had to be addressed by a larger work force on December 21, 1982. Furthermore, the record establishes that the Claimants were never contacted and offered the overtime work due to the fact they had removed their names from the Overtime Board, and consistently refused overtime work.

The Board finds, under these facts and circumstances, that the scheduling of the necessary repairs was within Carrier's managerial discretion and prerogative, not limited by statute or agreement. Second Division Award No. 6971. The Board further finds that both Claimants had removed themselves from consideration for the work at issue by removing their names from the Overtime Board, their refusal to perform overtime work in the past and in Claimant Howard's case, his physical absence due to vacation. As a result, the Board finds Carrier did not violate the seniority provisions of the applicable Agreement and the Claim must be denied.

Form 1  
Page 3

Award No. 10939  
Docket No. 10629  
2-MP-CM-'86

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1986.