

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employee:

1. That the Missouri-Kansas-Texas Railroad Company violated the agreement between the Missouri-Kansas-Texas Railroad Company and the Brotherhood Railway Carmen of the United States and Canada, effective January 1, 1957, as amended, and the Railway Labor Act, as amended, when the Missouri-Kansas-Texas Railroad Company failed to pay Carmen Jerry Blanton eight (8) hours pay at the proper pro rata rate for each work day (40 hours per week) that a Carman with a seniority date younger than his is permitted to work a job that became available between the dates of October 28, 1982 and November 24, 1982.

2. That all jobs that were advertiwed (sic) to "All Furloughed Carmen - South Lines" be abolished and readvertised to all Carmen furloughed by the MKT and each furloughed Carman be advised by Certified Mail, Return Receipt Requested.

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 September 20, 1982, Claimant, a Carman, who was employed by the Carrier in its Ray Car Department located at Denison, Texas, was furloughed in a systemwide general force reduction. On October 28, 1982, the Claimant accepted a job at the Carrier's facility at Fort Worth, Texas. Effective November 26, 1982, he was displaced by an employee with greater seniority. The Claimant returned to Fort Worth as a Lead Car Inspector effective July 6, 1983. He filled this position until he was recalled to Denison, Texas, his home seniority point, effective August 1, 1983.

The Organization contends that the Claimant was never advised by the Carrier that the job that he accepted at Fort Worth beginning October 28 was temporary. Since he believed that the job at Fort Worth was permanent the Organization indicates that the Claimant believed that he was accumulating seniority. During the time that he filled the job at Fort Worth, jobs were advertised at other locations and Carmen who had been furloughed and were junior to the Claimant were awarded these jobs. The Organization contends that since the Claimant was working at Fort Worth and had not been furloughed, he did not bid on these jobs. The Organization goes on to assert that the Claimant can only be furloughed by a reduction in force because he accumulated seniority at Fort Worth since October 28, 1982. By displacing the Claimant with a senior employee, the Organization asserts that the Carrier violated the Applicable Rule of the Agreement.

After carefully examining the record the Board concludes that the Claim is to be denied. It may very well be true that when the Claimant accepted the job at Fort Worth, he was not informed by the Carrier that the job was temporary. On the other hand, the Carrier never informed the Claimant that the job was permanent. Indeed, the Board is of the Opinion that the Claimant should have known that upon reporting to Fort Worth where he held no seniority, he would not be filling a permanent position and that he would not accumulate seniority, while filling the job.

It should be noted that under Rule 23(b) of the Controlling Agreement, seniority of Carmen "shall be confined to the point employed * *." Under Rule 13 employees holding seniority at the point where the vacancy or new job is to be filled have the initial right to be hired. Rule 21(f) which deals with Reduction of Forces, in relevant part, provides:

"While forces are reduced, if men are needed at other points, furloughed men will be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the Company, seniority to govern. (See letter July 12, 1950, page 94 attached)."

If the vacancy or new job is not filled, Bulletins are issued to other points to give furloughed employees an opportunity to bid on the vacancy or job being advertised. (See Letter Agreement dated July 12, 1950).

When new positions of Carmen were established or vacancies occur at Fort Worth, Dallas and Houston, the Carrier bulletined the positions locally to the employees at the point where the positions were established. Thus, Carmen at the points where the new jobs were established possessed a prior right to bid on the jobs. This procedure was followed at each point before

advertising positions to furloughed Carmen at points other than where the jobs were established. It should be noted also that Bulletins are required to be posted for five (5) days at the points where the jobs are established and only employees with seniority at the point where the jobs are established have the right to bid on the jobs. The Claimant had been working unassigned and temporarily at Fort Worth. He was never assigned a permanent vacancy in accordance with the procedures under the Agreement. He bid on a vacancy advertised at Fort Worth on November 11, 1982. No one with seniority at Fort Worth bid on the advertised vacancy. If the Company would have assigned the Claimant to the Fort Worth job on a permanent basis before the job was advertised to all furloughed Journeymen Carmen the Carrier would have violated the Agreement. After the job was advertised an employee senior to the Claimant was awarded the vacancy.

To sustain the Organization's contention that the Claimant was awarded a permanent position at Fort Worth and accumulated seniority would seriously undermine the Agreement and practice of the Parties. That junior employees bid on jobs at points other than Fort Worth and the Claimant failed to do so is of no weight. His failure to bid on other jobs at Dallas and Houston, Texas was at his own peril.

In light of the aforementioned considerations the Claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1987.

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R. L. HICKS

LABOR MEMBERS DISSENT

TO

AWARD No. 11108, (DOCKET NO. 10733)

(Referee Hyman Cohen)

The Majority erred in their decision in this Award.

The Majority ignored completely the agreed to application of the Rule as stated in the July 12, 1950 letter of understanding which stated:

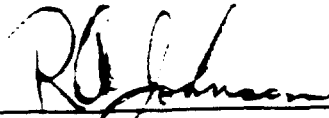
"First an employe who holds seniority at point "A" and is furloughed from that point, who has an opportunity to place himself on a job at another seniority point, or point "B", would accumulate seniority from the date he starts work at point "B".

They further ignored the record which contained copies of the Bulletins advertising the vacancy, none of which stated the position was temporary.

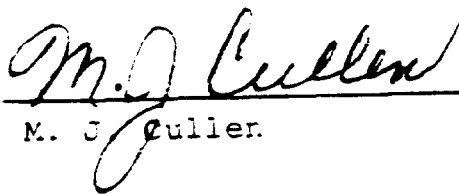
The Claimant was called by the Carrier to fill a vacancy at Fort Worth, on October 25, 1982 and began work at Fort Worth on the vacant position on October 28, 1982 under the above quoted interpretation from the Agreement the Claimant had placed himself on a position, therefore, establishing seniority at Fort Worth on the date he started working there.

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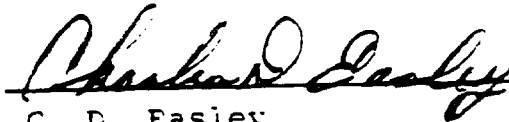
Because of the Majority's erroneous decision,
we vigorously dissent.



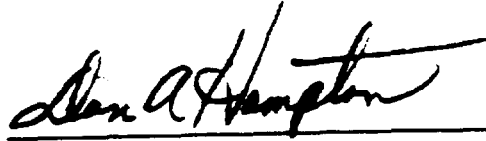
E. A. Johnson



M. J. Cullen



C. D. Easley



D. A. Hampton



N. D. Schwitalla