

The Second Division consisted of the regular members in and addition Referee T. Page Sharp when award was rendered.

(Brotherhood 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 Rules 11, 12 and 24 of the Controlling Agreement when they assigned Engine Carpenter A. R. Smith to work Special Car #8 and assigned Carman R. Woods to repair Engine #3272-2068-3246 applying knuckles on Engine #3146 and #3528 applied seats. This is back filling of jobs.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman G. Terry in the amount of eight (8) hours at the time and one-half rate for March 26, 1984.

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 employees 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.

Carman A. R. Smith, a Locomotive Carpenter, was assigned on the day in question to work on a Carrier business car. During the course of the day another Carman was assigned some work of applying couplers and seats to diesel locomotives. As a result of these assignments Claimant contends that the position of A. R. Smith was "back filled" and consequently he should have been awarded that position.

The Carrier contends that the repair to business cars is part of the normal functions of the Locomotive Carpenter's duties and that the movement of another Carmen to assist Mr. Smith violates no part of the Agreement. It further states that the cited Rules, 11, 12 and 24, are not applicable to the Claim.

Both parties refer to a Letter of Understanding dated March 9, 1983 as pertinent. That Memorandum states in part:

"The Organization's position, as stated in the conference, was that this claim would be withdrawn if Carrier would disavow the practice referred to by the Organization as 'back-filling.' Insofar as the Organization acknowledges Carrier's right to move carmen from the train yard to repair track, or vice versa, to fill unexpected vacancies, Carrier will state that it is not Carrier's intention to fill, by means of further moving of other employes, the position of the carman first moved. The Organization's position was that they took no exception to the 'back-filling' of position of carmen who voluntarily went from their position to another to fill an unexpected vacancy."

A recent Award has been made on this property concerning the "back-filling" of positions, Second Division Award No. 10978. Adhering to the well reasoned rule of stare decisis, this Board should follow the rulings of prior Boards on the same property unless their Award was totally erroneous.

That Board stated a precept that is binding on us when it said:

"Furthermore, the Organization has failed to demonstrate that the 'Torchman' position exclusively performs the welding, cutting and heating at the Houston facility or that other Carman-Welders do not routinely perform 'torch work' that is incidental to the repair of freight cars. As a result, the instant Claim lacks evidentiary support."

Applying this logic to the instant Claim, we must conclude that it is incumbent on the Organization to prove that the repair of business cars is not part of the normal work of the Locomotive Carpenter position and that the work of applying knuckles and seats to locomotives is exclusive to the Locomotive Carpenter position. If the work does not meet these criteria no employe has been moved either from his position or into another position.

We find from the evidence submitted into the record that nowhere is it shown that the function of working on the business car is not part of the Locomotive Carpenter function. Nor has it been shown that the Carman assigned to assist Carman Smith in his usual function was performing work outside his classification.

Based on this finding we must agree with Award 10978 as stated:

"Rule 11 is entitled 'Filling of Vacancies' and provides that an employe filling the job of a higher rated employe will receive the higher rate and if he fills the job of a lower rated employe, he will receive his current rate. This Board cannot conclude that this Rule is applicable to the instant case. Rule 12 is entitled 'Filling New Positions or Vacancies' and concerns the bulletining of new positions and vacancies of 15 days or more duration. Clearly, this Rule is not applicable to the facts of the present case. Similarly, Rule 24 which is entitled 'Seniority' is not relevant to the instant dispute."

We find that the Organization has not met its burden of proof of the Claim as stated.

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 11th day of February 1987.