Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11156
SECOND DIVISION Docket No. 10975-T
2-MP-CM-'87

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated Rule 25 (a) of the Controlling Agreement and Local Truck Drivers Agreement when they instructed car foreman Mr. J. E. Smith to drive pickup truck to Lloyd Yard, Spring, Texas, with two Carmen to rerail a car.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman J. Flores in the amount of four (4) hours at the time and one-half rate for February 24, 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 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 February 24, 1984, a freight car derailed near Houston, Texas. The Car Foreman on duty at Houston was directed to take two Carmen with him and to proceed to the site of the derailment. They arrived at the scene of the derailment and were able to rerail the derailed car in approximately three and one-half hours. Because the Foreman had driven the pick-up truck, the present Claim was submitted.

The Organization relies on Rule 25 of the Schedule Agreement and a Local Agreement. Rule 25 reads in pertinent part:

"(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employes employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts.

. . .

This rule does not prohibit foremen in the exercise of their duties to perform work."

Nothing can be gained by perusing Rule 25 because the issue to be resolved is work that is reserved by Agreement to Carmen. This Rule only states that work so reserved is Carmen's work.

The Local Agreement reads:

"MEMO:

Effective May 1, 1980 the 7:00AM to 3:30PM Truck Driver Job No. 4-20 will be discontinued. The job will be rebulletined as Carmen on the repair Track and other Carmen duties, Monday thru Friday, 7:00AM to 3:30PM, Rest Days Saturday and Sunday, effective May 1, 1980.

A truck driver overtime board will be established 7:00AM, May 1, 1980. The truck drivers that are on this overtime board will be rotated monthly according to seniority. If a person desires to be placed on this truck drivers' overtime board, he will be expected to break in and be given a chance to qualify. When he is deemed qualified by his supervisor, he will be allowed to go on the truck driver overtime board. All truck drivers must have a commercial license or chauffeur's license, the cost of which will be borne by Missouri Pacific.

All trips with the pick-up truck will be worked off the Rip Track overtime board."

This Agreement was signed by the Vice-General Chairman and Committeemen and by the Master Mechanic and General Car Foreman.

If this Local Agreement was a binding Agreement and could be interpreted to give the exclusive job of truck driving to the Carmen, Rule 25 would prohibit Supervisor from performing this work. The Carrier raises two objections to the Agreement. One is that it ended when the primary signatory, the Master Mechanic, was transferred. The other is that the making of such an Agreement is outside the confines of the Railway Labor Act and has no binding effect.

Obviously binding agreements do not cease with the departure of the signatories. This Carrier defense can only be interpreted as stating that a Local Agreement can be honored if the signatories so deem to honor it, but because it is an ad hoc Agreement without binding effect, the departure of a party with authority to honor it does not commit a successor.

It has long been held that, under the Railway Labor Act, the designated Officers of each of the parties to a Collective Bargaining Agreement have the authority to make binding agreements. It was brought out by the Carrier in correspondence with the Organization that only the General Chairman and the highest designated Carrier Officer could have made an effective Agreement. Neither of these persons was signatory to the Agreement.

The driving of a Carrier vehicle by a Foreman when reporting to a derailment is not prohibited without a showing that the work is the exclusive work of the craft. Because the Local Agreement has no binding effect, it cannot be utilized to claim this exclusivity that would adhere to the craft under the terms of Rule 25.

The Organization has not proved its case and the Claim must be denied.

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 11th day of February 1987.