

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Missouri Pacific Railroad Company

Dispute: Claim of Employee:

1. That the Missouri Pacific Railroad Company violated the Controlling Agreement Rule 102 as amended August 16, 1984, and Local Truck Drivers Agreement of April 10, 1980, on September 5, 1984, Houston, Texas.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman J. Culley, Jr., in the amount of four (4) hours at the straight time 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 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 5, 1984, the Carrier's General Car Foreman drove a Company pickup truck along with two Carmen to Westfield, Texas in order to re-rail a car.

The Organization argued the above action was a violation of Rule 102 and the Truck Driving Agreement, which the Organization claims is still in effect. These are reproduced as follows:

"Rule 102: Vehicles.

Operate vehicles used in the process of transporting carmen in the performance of Carman's duties. Such operators must qualify for operating said vehicles on public roads as required by law. (Except when said vehicle is also used by a supervisor in carrying out his duties)."

"Houston, Texas April 10, 1980

MEMO

Effective May 1, 1980 the 7:00AM to 3:30PM Truck Driver Job No. 4-20 will be discontinued. The job will be re-bulletined as Carman on the Repair Track and other Carman 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 signed by the parties below:

(signed) S. F. Kennedy, Vice General Chairman
(signed) F. R. Hickerson, Master Mec
(signed) T. G. Walker, Local Chairman - Carman
(signed) T. W. Duncan, General Car
(signed) C. Reed, Carman Committeeman
(signed) T. W. Robertson, Carman Committeeman"

The Organization stated that the duty of transporting Carmen to perform work belongs exclusively to the Carman's craft by both Rule and Agreement.

The Carrier argued the Rule does not allow for exclusivity. Carmen can operate Company vehicles, but the Carrier is not obligated on an exclusive basis to allow only Carmen to transport other Carmen. The Carrier noted its policy that an Officer must be present at all derailments. The Truck Driving Agreement reproduced above was not in effect and also was not signed by a Labor Relations official of the Carrier, as required by the Railway Labor Act, and, therefore, it is only binding during the tenure of the signatory. The Carrier noted that the Organization cannot demonstrate by Rule or by exclusive practice that Carmen can only be transported by Carmen.

Upon complete review of the evidence, the Board finds that neither Rule 102 nor the Truck Driving Agreement dated April 10, 1980, grants to the Carmen exclusive rights to truck driving assignments. Since the Organization did not meet its burden to show that the work is exclusive to the Carman's craft, the Claim will 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 1st day of April 1987.