

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 Employees:

1. That the Missouri Pacific Railroad Company violated the memorandum agreement - Displacement Rights Returning to Ranks - of the Controlling Agreement revised September 1, 1981.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carman M. R. Dietzel eight (8) hours additional pay at the punitive rate beginning September 30, 1983 and continuing until Carman M. R. Dietzel returned to first (1st) shift repair track, Dupon, Illinois on November 29, 1983.

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.

A Car Foreman voluntarily relinquished his position in the Car Department in the St. Louis Terminal on September 26, 1983. The Organization asked that the Carrier assign him to the youngest working Carman position in the Terminal. Instead, he was allowed to displace an employee scheduled to be furloughed the following day. This allowed him on September 28 to displace Claimant who as a result was only able to bid in a night shift position. As a result of this action the present Claim was filed.

The matter is governed by a long standing letter from the Carrier to the Organization which has been treated as an Addendum to the Schedule Agreement. The document states:

"A mechanic who gives up his foremanship is entitled to take a position as a mechanic at the point where he holds seniority but cannot exercise his preference on any particular position until a vacancy occurs or the position is advertised, at which time he can assert or bid on the position in accordance with the seniority rules."

When the Organization raised the Claim it was first answered by the Master Mechanic who stated in part:

"In your statement of facts, you state on or about September 26, 1983, Car Foreman Ray E. Schaffer elected to give up his foremanship in order to return to carman. It is true Mr. Schaffer relinquished his rights as a foreman in order to return to the ranks of a carman.

It was wrong on the part of the Carrier to permit Mr. Schaffer to place bump against youngest man who was listed on furlough bulletin, which in turn forced Carman M. R. Dietzel being deprived of a first shift position. However, since claimant continued working and has to date lost no compensation, there is no basis for a continuing claim...."

This letter also objected to the demand for interest.

The next correspondence from the Carrier came from the Mechanical Superintendent who stated in part:

"Evidently supervisors erored (sic) in allowing Mr. Schaffer to displace junior carman H. K. Fingerhut, since he was listed on bulletin to be furloughed. However, there is no basis for continuing claim...."

The last correspondence from the Carrier stated:

"Initially, records indicate that various jobs were abolished and readvertised at Dupo on or about November 15, 1983, and at that time Claimant Dietzel could have bid in a first shift job; instead, he bid to a first shift job at Barton Street, St. Louis. On that same date Claimant Dietzel's former assignment (the one claimed herein) was also abolished. Therefore, the continuing nature of this claim must be deemed to have ended on that date.

While claimant was admittedly mishandled, there is certainly no basis under the existing Agreement for the payment claimed...."

In its Submission to this Board, the Carrier presents an elaborate argument to justify the decision to allow the Foreman to displace as he did. However, none of these arguments was raised on the property and, therefore, are not properly before us now. The sole contention of the Carrier in the entire chain of correspondence in the record is the statement that there is no authority under the Agreement to require payment to an employee who has lost no compensation from the Carrier's actions.

For years this Division has been split on the issue of compensation where there has been a rule violation with no resulting loss of compensation to a Claimant. Boards have applied the punitive rate, no compensation, and normal compensation. We find that a deliberate violation needs a sanction. Otherwise, the carefully negotiated Agreement can, in certain respects, be rendered meaningless. The Organization called attention to the violation before the initial move was made by the Carrier. Thereafter, subsequent protests were of no avail. We think that under these circumstances normal compensation should be awarded.


We will award a day's pay, at the pro rata rate, for each day for the period of time Claimant's rights were violated. We agree with the Carrier that the punitive rate is unwarranted and that the continuing nature of the Claim ceased on November 15, 1983.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1987.