

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

Dispute: Claim of Dispute:

1. That the Missouri Pacific Railroad Company violated Rules 24, 25 and 102 February 23, 1984, when they sent Carmen from Fort Worth, Texas, to Durant, Oklahoma, to inspect and repair freight car UP15236 at Durant, Oklahoma.

2. That the Missouri Pacific Railroad Company be ordered to compensate Carmen F. G. Goins and J. L. McKee in the amount of six (6) hours each at the punitive rate account of this violation.

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.

It is the Organization's position that Carrier violated the controlling Agreement, specifically Rules 24, 25, and 102, and also the December 16, 1970, coordinating Agreement. The latter Agreement was entered into by the Texas & Pacific Railroad, the Missouri Pacific Railroad, and the Brotherhood of Railway Carmen. The pertinent section of the 1970 Agreement is referenced herein-after:

"The emergency road service work on the Midland Valley and Oklahoma subdivision of the Texas and Pacific from Pawhuska to Panama and OKAY Junction to KO&G Junction at Durant now being performed by Carmen headquartered at Muskogee will be consolidated with and performed jointly by Carmen employed at Muskogee on the

Texas and Pacific and Carmen employed at Coffeyville on the Missouri Pacific."

According to the Organization, Carrier violated the aforesaid Rules when Carmen from Fort Worth, Texas were sent on February 23, 1984, to inspect and repair freight car UP15236 at Durant, Oklahoma. It asserts that said work exclusively accrues to Carmen having rights on the seniority subdivision encompassing Durant, Oklahoma, which includes Carmen employed at Coffeyville on the Missouri Pacific and Carmen employed at Muskogee on the Texas and Pacific. It maintains that the December 16, 1970 Agreement makes no provision for such work to be performed by Carmen holding seniority at other points on either the Texas and Pacific or Missouri Pacific.

Carrier contends that following the August 2, 1981, Agreement consolidating the Agreements applicable to Carmen on the Missouri Pacific and Texas and Pacific Railroad, the December 16, 1970, Agreement was no longer in effect, since all understandings, interpretations, and Agreements on the Missouri Pacific applied in toto to the former Texas and Pacific Railroad. Thus, it asserts that the 1970 Agreement is now moot. It notes that as of August 21, 1981, Claimants and Carmen at Fort Worth were all under the same collective Agreement and, as such, possessed point seniority at the situs employed.

In effect, it argues that Rule 24(a) regarding point seniority is applicable to employees at Muskogee and does reserve work for them at Durant. It also points out that Rule 7 (Emergency Road Service) of the controlling Agreement does not reserve this type of work to Carmen at Muskogee, but merely sets forth the conditions and standards of emergency road service.

In considering this case, we agree with Carrier's position. By itself and in the absence of the successor 1981 systemwide Agreement, the 1970 coordinating Agreement would apply and the Carmen at Muskogee would be entitled to the work. However, the Missouri Pacific Agreement superceded all prior Agreements on the Texas and Pacific Railroad and the seniority provisions of the Missouri Pacific were applicable uniformly to all Carmen on the consolidated system.

Rule 24(a) of the Agreement confined employee seniority to the point and seniority subdivisions and since Rule 7 (Emergency Road Service) does not set out an exception and since the 1970 Agreement addressed the employment rights of Carmen on two separate railroads, the omnibus application of the Missouri Pacific Agreement was intended to cover all Carmen on the consolidated road. This is further evident by the contemplated purpose of Sections 2 and 3 of the 1981 Agreement, nullifying all understandings, interpretations, and Agreements previously in effect on the former Texas and Pacific Railroad.

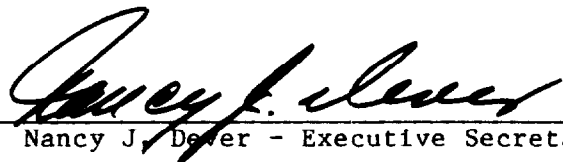
Award No. 11399
Docket No. 11032
88-2-85-2-161

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 6th day of January 1988.