

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11721
Docket No. 11581
89-2-88-2-64

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
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(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Missouri Pacific Railroad Company violated Rule 12 of the controlling agreement of September 1, 1988, as amended, when General Car Foreman Kipp refused to post job bulletin Y-8 in the Settegast yard due to a vacancy which is required as per Rule 12 of the controlling agreement.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman C. Miller in the amount of twelve (12) hours per day for each day that he was not allowed to fill this vacancy, commencing on January 25, 1987 and continuing until violation is corrected.

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.

The Organization contends that the first sentence of Rule 12 (c), reading:

"Vacancies, except vacation vacancies, known to be of fifteen (15) days or more duration will, if the vacancy is to be filled, be advertised as 'temporary vacancies' in the manner prescribed in (b) of this Rule 12."

was violated when Carrier failed to temporarily bulletin Carmen Job Y-8 in the Settegast Train Yard when the incumbent was unable to fill the assignment account being laid up because of an on-duty injury. The Organization contends that the incumbent notified his Foreman that he would be off work more than fifteen days. During this time the Carrier filled the vacancy on "an as needed basis."

From the facts before us it seems conclusive that Carrier knew that the vacancy on Job Y-8 was known to be of "fifteen (15) days or more duration." The facts are also conclusive that the vacancy was filled during this period. The literal language of the Rule requires, when two conditions are met, knowledge that the vacancy will extend beyond fifteen days and the vacancy is to be filled, that the vacancy be bulletined. This was not done and the Claim will be sustained.

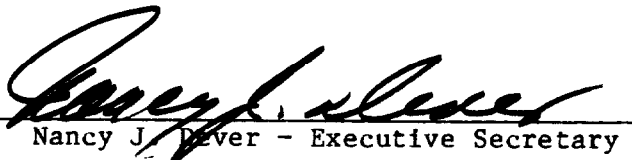
The amount initially claimed was for 12 hours pay, five days per week, until the violation was corrected. There is no basis to award more than 8 hours pay for each scheduled workday. Accordingly, the amount claimed will be reduced to 8 hours pay per day. Also, there is evidence that Job Y-8 was abolished due to change of assignments as of March 3, 1987. Carrier's liability will terminate on that date. Accordingly, the Claim is sustained for 8 hours pay at straight time rates, for each day, except Fridays and Saturdays, commencing January 25, 1987, and ending March 3, 1987.

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 3rd day of May 1989.