

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

(Brotherhood Railway Carmen/Division of TCU

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

a) That the Missouri Pacific Railroad Company violated Rules 8, 12 and 117 of the controlling Agreement when they made reduction of forces at Baytown, Texas, Job #BA-1 and other jobs outside points - Texas City, Texas and Spring, Texas. Missouri Pacific Railroad refused to post job for bid by senior employes, Carmen J. Verla for November 18, 1986 at Texas City - clean slack adjuster, MCTX 21053; R. Wood for November 19, 1986 at Baytown, Texas - welded cross key retainers, MP 819750; J. Flores for November 20, 1986 at Baytown, Texas - INOP Air, GATX 47605; J. St. Julien for November 21, 1986 at Spring, Texas - knuckle and pin, GRR 1049; C. Miller for November 24, 1986 at Baytown, Texas - INOP Air, MP 650464; P. Lundry for November 26, 1986 at Baytown, Texas - welded cross key retainers, MP 819646, MP 819616; L. Manriques for December 3, 1986 at Baytown, Texas - INOP Air, GATX 47605; M. Reed for December 4, 1986 at Baytown, Texas - inspected body bolster, ZIPX 33501 - MK yard - knuckle pine, R Box 37446; R. Batiste for December 8, 1986 at Baytown, Texas - repaired sill step, GATX 38354; and L. Askew for December 15, 1986 at Baytown, Texas - welded cross key retainers, MP 819607, MP 819750, MP 819770.

b) That the Missouri Pacific Railroad Company be ordered to compensate Carmen J. Verela, R. Wood, J. Flores, J. St. Julien, C. Miller, P. Lundry, L. Manriquez, M. Reed, R. Batiste and L. Askew for thirty (30) minutes straight time for each date listed.

c) That the Missouri Pacific Railroad Company be ordered to restore the carman's position at Baytown, Texas.

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 Carrier operates a train yard, known as the Settegast Yard, and repair track at Houston, Texas. A number of carmen hold seniority with the Carrier at Houston.

Before November 15, 1986, the Carrier also kept a carman at Baytown, Texas, a short distance from Houston. Carman R. A. Greaff held that position in November 1986. Effective November 14, 1986, the Carrier abolished the carman's position at Baytown in a reduction of force which resulted from declining business. The Carrier determined that insufficient work remained at Baytown to justify keeping a carman there full time. Carman Greaff exercised his seniority to return to a position at Houston.

The record reflects that the Carrier has traditionally sent carmen from Houston to perform carmen's work at nearby outlying points when such work has arisen at those points. After the carman position at Baytown was abolished, the Carrier followed that practice with respect to carmen's work which occasionally arose at Baytown. On the dates mentioned in the Claim, Greaff was sent by the Carrier to Baytown to perform such work. In fact, on two of the ten dates in the Claim, the work was performed not at Baytown but at Texas City and Spring, Texas. The Carrier states that those locations were not serviced by Carman Greaff when he was stationed at Baytown.

The Organization contends that, after having abolished the Baytown position, the Carrier was obliged to reestablish and rebulletin the position as soon as it needed any carmen's work done at that location. According to the Organization, the Carrier was not free to simply send a carman from Houston to perform carmen's work at Baytown, even though the Carrier had long followed that practice with no objection from the Organization with respect to carmen's work occurring intermittently at other points.

However, the Organization has not shown that its position is grounded in the Agreement. The Organization relies on Rules 8, 12 and 117. Rule 8 ("Distribution of Overtime") states:

"Rule 8

(a) When it becomes necessary for employees to work overtime they shall not be laid off during regular working hours to equalize the time.

(b) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally. Local Chairman will, upon request, be furnished with record."

Rule 12 ("Filling New Positions or Vacancies") provides in pertinent part:

"Rule 12

(a) New jobs created and vacancies will be bulletined and the oldest employees in point of service shall, if sufficient ability is shown by fair trial, be given preference in filling."

Rule 117 ("One Man Points -- Outlying Points") provides in pertinent part:

"(c) Seniority will be acquired at one-man points and at outlying points when men are regularly assigned to positions at such points and their seniority will be confined to that point. Men who bid for and are assigned to one-man points or outlying points, using their seniority at their home point, will retain seniority at the home point but may not return to the home point and exercise seniority unless they are no longer able to hold a regular assignment at the one-man point or outlying point, and when seniority is exercised at the home point, they will no longer hold seniority at the one-man point or outlying point."

The Claim filed by the Organization explains the Organization's theory as follows:

"When Carman Greaff's position at Baytown, Texas was discontinued on November 14, 1986, he exercised his seniority and returned to Houston, Texas, his home point, in line with Rule 117 of the Controlling Agreement. Carman Greaff no longer holds seniority at Baytown, Texas or any other outlying point as of the close of shift on November 14, 1986.

The Carrier has continued to work the position at Baytown without posting a bulletin for the outlying point per Rule 117 for the above mentioned dates.

Rule 12 of the Controlling Agreement is being violated because the Carrier has failed to bulletin the position at Baytown, Texas. The Carrier has not allowed the position to be filled by the oldest employee in seniority per Rule 12. Also, the position has been filled for more than 15 days without being advertised per Rule 12.

Rule 8 of the Controlling Agreement is being violated by the Carrier as meal periods for the above mentioned days are being paid to only Carman Greaff, thus, not distributing payment in advance of eight hours equally."

There is no dispute that, once the Carrier abolished the carman's position at Baytown, Carman Greaff no longer held seniority at that point. But that is irrelevant to this Claim. Carman Greaff returned to Houston in accordance with the applicable Rules, and nothing in the Rules cited by the Organization barred the Carrier from thereafter sending him out to perform occasional work at Baytown. Although Greaff no longer held seniority at Baytown by virtue of Rule 117, he was eligible like any carman at Houston to be assigned intermittently to that outlying point.

Nor was the Carrier required by the Agreement to rebulletin a vacancy at Baytown merely because some carmen's work continued to arise there. The Claim indicates that Greaff was sent to Baytown on only eight occasions between November 18, 1986, and December 15, 1986, and the tasks he was sent to perform do not appear to have involved a full day's work on those occasions. It simply does not appear that there was sufficient work at Baytown to warrant a full-time position there. As this Board held in a similar context, in Second Division Award 10708, the Agreement:

"does not obligate the carrier to establish a regular relief position if sufficient work is not available for five days per week Any other construction would require the Carrier to employ a regular relief employee five days per week even though on some days he would be idle."

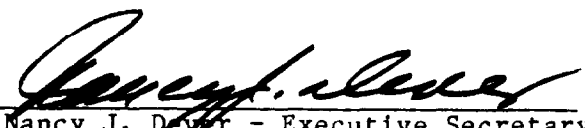
Furthermore, Rule 8 was not violated in this situation. To the extent Carman Greaff was paid for meal periods while away from Houston, that was in keeping with Rule 6 of the Agreement. Such payment is not shown to have resulted in a significantly unequal distribution of overtime, in violation of Rule 8.

There being no evidence that the Carrier violated the cited provisions of the Agreement in the particulars of this Claim, the Claim must accordingly be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 8th day of May 1991.