Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12403
Docket No. 12391
92-2-91-2-187

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(
(Chicago, Missouri & Western Railway Company

STATEMENT OF CLAIM:

1. That the Chicago, Missouri & Western Railway violated the terms of our Agreement, particularly Rules 8, 16, 18, 19, 20 and 22, when they arbitrarily removed Carman L. Harper from his regular assigned position. The Carrier also violated Rule 34 of the Agreement by failing to deny this claim in a timely manner.

2. That accordingly, the Chicago, Missouri & Western Railway be ordered to compensate Carman L. Harper $10,000 (ten thousand dollars) as payment for arbitrarily removing him from assigned position and to cover the expense of traveling from Springfield, Illinois to East St. Louis, Illinois.

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 genesis of this dispute, as in the corollary claim in Second Division Award 12375, resides in the economic conditions associated with the business climate during the time period under consideration. The Carrier became a railroad in April 1987, and commenced operation over tracks in Illinois and Missouri purchased from the Illinois Central Gulf Railroad. The projected business did not develop and after operating at a deficit for some time, the Carrier was forced to seek protection under Chapter 11 of the Bankruptcy Code in April 1988. Its efforts to curtail expenses resulted in substantial lay-offs for all classes of employees. The reduction in Carmen ranks was particularly contentious at the East St. Louis Yards. This situation was further aggravated in April 1989, by the withdrawal of business from that yard by its largest customer. These conditions prompted a flurry of claims. It is from this background that the misunderstandings associated with the present Claim arose.

The frustrations felt by the Organization are apparent from the manner in which the Claim was handled on the property. The September 18, 1989 Statement of Claim stated in part: "...violations of the Controlling Agreement appears to be a continual intent to destroy carmen's seniority..." and "Carrier and individuals responsible be fined the maximum allowable under the Railway Labor Act, Title 45 - United States Code, Chapter 8 ...." The Claim was denied.

The appeal on October 5, 1989, was on behalf of Claimant and Mr. B. Crenshaw. Following this appeal letter, the claims were separated and dealt with individually. Mr. Crenshaw's Claim was disposed of in Second Division Award 12375. The Carrier exceeded the time limits contained in Rule 34 of the Agreement when it replied on December 29, 1989, but since the Claim had asked for damages and punishment under the Statute rather than referring to violations and expected relief afforded by the Agreement, it believed the 60 day time limit did not apply. We agree with the Carrier.

Based on the record, the shifting of emphasis by the Organization as the dispute was processed on the property is more the product of frustration than an effort to rectify transgressions of the Agreement in good faith as required by the procedures of the Railway Labor Act. We, therefore, find no violation of Rule 34.

The circumstances which give rise to Claimant's position were occasioned by the fact that Carman N. Green, based in East St. Louis, took vacation. Claimant, who was returning from vacation, requested to be assigned the vacation relief position in East St. Louis. Since Claimant was the most senior Carman not working at that location and since he resided closer to East St. Louis than the location of his bid position in Springfield, the Carrier elected to assign him the position. In so doing, it was within its rights under the Agreement. The pertinent Rule in the Agreement reads in applicable part:

> Rule 31, Vacation:
> "(h) Absences due to vacation shall not be considered as vacancies in applying the Rules of this agreement."

It should be noted that, although the Organization in its Statement of Claim believes that Claimant was arbitrarily removed from his regularly assigned position, the record indicates that Claimant was assigned to East St. Louis at his own request. Based on the foregoing and the entire record, we determine that there was no violation of the Agreement.

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 5th day of August 1992.