

SPECIAL BOARD OF ADJUSTMENT NO. 279

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
versus  
MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT

OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement during the period of December 10 to 31, 1959, by permitting a junior B&B Foreman to fill the position of Foreman in System B&B Gang No. 1 and failing to assign senior B&B Foreman H. J. Hamilton to fill this vacancy.

(2) The Carrier now reimburse B&B Foreman H. J. Hamilton for the difference in pay between what he received while working as a Division Assistant B&B Foreman (Division B&B Foreman during the period December 14-15 and 16, 1959) and that which he would have received as System Gang B&B Foreman during this period referred to in part 1 of this claim.

FINDINGS: The claim here involves the filling of the position of Foreman in System B&B Gang No. 1 while the regular foreman was on vacation. Article 12(b) of the Vacation Agreement controls because it provides that absence on vacation is not a vacancy under any rule. It provides that in filling the position of a vacationing employee "effort will be made to observe the principle of seniority."

This provision does not require in all cases the use of the senior man as noted in our Award No. 57 and while the Employees' contentions herein may be appropriate in connection with filling vacancies, they are not appropriate under this Vacation Agreement.

That Agreement requires the Carrier to make a bona fide effort to observe seniority and to show that it had a reasonable basis for any decision to use a junior man.

In this case, it is shown that the gang was engaged in a complicated effort of constructing a cofferdam for a new pier under a high through truss. The man selected had been working in the gang and was familiar with the work in progress. Carrier states that the claimant is without experience in cofferdam work and that in view of the use of a long boom it considered an inexperienced man presented an undesirable safety hazard.

Thus under the circumstances disclosed in this docket it cannot be said that the Carrier acted arbitrarily in by-passing the claimant, and the claim cannot be sustained simply because claimant was senior to the man selected.

AWARD: Claim denied.

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(s) Dudley E. Whiting  
Dudley E. Whiting - Chairman

(s) A. J. Cunningham  
A. J. Cunningham - Employee Member  
St. Louis, Missouri, September 27, 1962

(s) G. W. Johnson  
G. W. Johnson - Carrier Member  
File BMWE 30-59