

Award No. 162

Docket No. 166

2-MP-MA-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist Helper C. R. Bowman be compensated in line with Rule 4 (c) of wage agreement for call to attend court as witness for Missouri Pacific Railroad Company, January 6, 1937. Total amount claimed 4 hours, rate 53¢ per hour, total \$2.12.

EMPLOYEES' STATEMENT OF FACTS: C. R. Bowman is a regular assigned machinist helper on night shift, Coffeyville, Kansas, working from 7:30 P. M. to 4:30 A. M. On January 6, 1937, Mr. Bowman was called at 2:30 P. M. (which would be equivalent to 2:30 A. M. for day-assigned employes) to appear in court at 4:30 P. M. as a witness for the Missouri Pacific Railroad Company in case of Robert Taylor vs. Missouri Pacific Railroad Company. Mr. Bowman was released at 6:00 P. M.

POSITION OF EMPLOYEES: We contend that Mr. Bowman was at time of call not on duty, consequently Rule 19 of wage agreement is not applicable.

"Rule 19 (a). Employes taken away from their regular assigned duties at the request of the Management to attend court, or to appear as witnesses for the railroad, will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place, and, in addition, necessary expenses while away from headquarters."

We further contend that Mr. Bowman is entitled to compensation in line with Rule 4 (c) of wage agreement.

"Rule 4 (c). Employes called or required to report for work and reporting but not used will be paid a minimum of four hours at straight-time rates."

in the amount as set forth in Employees' Statement of Claim.

CARRIER'S STATEMENT OF FACTS: Mr. C. R. Bowman, employed as machinist helper, Coffeyville, Kansas, regular assigned hours 8:00 P. M. to 5:00 A. M. January 6, 1937, he was ordered to report to company attorney at Coffeyville, Kansas, as a witness in case of Robert Taylor versus Missouri Pacific; released at 6.00 P. M.

POSITION OF CARRIER: Rule 19 (a) of our wage agreement with the mechanical department employes, dated July 1, 1936, reading:

"Employes taken away from their regular assigned duties at the request of the Management to attend court, or to appear as witnesses

for the railroad, will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place, and, in addition, necessary expenses while away from headquarters."

governs time allowances made to employes when requested by the management to attend court or to appear as witnesses for the railroad. Mr Bowman lost no time from his regular employment account serving as witness in this case. He was released at 6:00 P. M. and reported for duty at the roundhouse at 8:00 P. M., January 6, 1937.

Rule 4 (c), cited by the employes to support their claim, reading:

"Employes called or required to report for work and reporting but not used will be paid a minimum of four hours at straight-time rates."

has no bearing whatsoever on this case. The employe was not called or required to report for work, hence rule not applicable.

Rule 19 (a) has been in our wage agreement with the mechanical department employes for a number of years and it has not been the practice under the rule nor does the rule provide that employes will be additionally compensated when called to attend court at the point where employed when they lose no time from their regular employment by reason of such court attendance.

There is no rule in the agreement or past practice to support the employes' contention in this case, and same should be denied.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

Rule 19 (a) reads, in part, as follows:

"will be allowed compensation equal to that which would have been earned had such interruption not taken place."

The dispute in the instant case is a matter subject to negotiation between the parties.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1937.