

Award No. 773

Docket No. 709

2-MP-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That on June 17, 1941, at Omaha, Nebraska, the carrier did violate provisions of Rules 4 (d) and 10 of current wage agreement by compensating Machinist Helper Joe Firmature for 8 hours at straight time rate for being required to report for service on second shift on said date.

(b) That Machinist Helper Joe Firmature be compensated under provisions of Rules 4 (d) and 10, rate of time and one-half, for said requirement.

EMPLOYEES' STATEMENT OF FACTS: Machinist Helper Joe Firmature is an employee of the carrier at Omaha, Nebraska on day shift, which begins work at 8:00 A. M.

Date of June 17, 1941, Mr. Firmature worked his regular shift, 8:00 A. M. to 5:00 P. M. At an unstated hour between 8:00 A. M. and 5:00 P. M. foreman advised Mr. Firmature that it would be necessary for him to report at 8:00 P. M. of same date to work second shift, 8:00 P. M. to 5:00 A. M., as a Class B machinist, for which service he was compensated the Class B machinist rate at straight time.

POSITION OF EMPLOYEES: That Rule 4 (d) of current Missouri Pacific wage agreement, signed July 1, 1936, is mandatory that employees required to report for service will be compensated at rate of time and one-half. Rule 4 (d) of current Missouri Pacific wage agreement reads:

"Employees called or required to report for work and reporting will be allowed a minimum of four hours for two hours and forty minutes or less, and will be required to do only such work as called for or other emergency work which may have developed after they were called and cannot be performed by the regular force in time to avoid delays to train movement."

(Emphasis ours.)

It is our further position that Rule 10 of current Missouri Pacific wage agreement is mandatory that employees changing from one shift to another will be paid overtime rate for the first shift of each change. Rule 10 current Missouri Pacific wage agreement reads:

"Employees changed from one shift to another will be paid overtime rates for the first shift of each change. This will not apply

Rule 10 of wage schedule agreement provides:

"Employees changed from one shift to another will be paid overtime rates for the first shift of each change. This will not apply * * * when shifts are exchanged at the request of employees involved or in the exercise of their seniority rights."

Mutually agreed application of this rule provides:

"In the application of that part of the rule reading:

'Employees changed from one shift to another will be paid overtime rates for the first shift of each change.'

applies where employees are changed from one shift to another by the management."

Firmature was not changed from one shift to another by the management but by mutual agreement between Division Foreman Perry and Local Chairman Smith as evidenced by Mr. Perry's report on this case dated July 2, 1941, heretofore quoted.

POSITION OF CARRIER: In the presentation of this case the employees base their claim that Firmature be paid time and one-half for the services performed on the second shift as a Class B mechanic on June 17 after having worked as a machinist helper on the first shift under Rules 4 and 10 of the wage schedule agreement.

As evidenced by remarks in carrier's statement of facts, neither of these rules apply to the instant case, as Firmature was promoted from one class—helper—to another class—B machinist—and assigned to work the latter shift to fill a vacancy temporarily created by the rearrangement of forces to permit one of the employees to get away on a leave of absence, all being handled by mutual agreement between the authorized representatives of the employees and the division foreman in charge of the Omaha shops.

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.

This record shows that Firmature, having been assigned at his own request, in the exercise of his seniority, was paid straight time in compliance with the last sentence of Rule 10, claim cannot be sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of May, 1942.