

**Award No. 2493**

**Docket No. 2329**

**2-MP-CM-'57**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 2. RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the applicable agreements the Carrier improperly denied compensation to Car Helper A. F. Burgess for Decoration Day, May 30th, 1955.

2. That accordingly the Carrier be ordered to compensate Car Helper Burgess in the amount of eight (8) hours at the pro rata hourly rate for Decoration Day, May 30, 1955.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. A. F. Burgess, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as a car helper.

On May 11, 1955, the claimant was transferred from laborer to car helper at Nevada, Missouri as a regular employe—this is substantiated by claimant's letter of June 30, 1955 addressed to Local Chairman M. C. Trainor, Nevada, Missouri. This statement is further substantiated by the carrier's seniority roster at Nevada dated January 1, 1956 which shows the claimant's seniority date as car helper as of May 12, 1955, the day he commenced work and was assigned to his duties as car helper.

By direction of the carrier the claimant was assigned to fill a regular carman helper's position on the rip track due to increase in force, hours 7:30 A. M. to 12 Noon—12:30 P. M. to 4:00 P. M., work week Monday through Friday, rest days Saturday and Sunday. The claimant worked this assignment up to May 17, 1955; he was set up May 18 and worked as carman up to and including May 25, 1955 due to temporary vacancy of carman laying off. He returned back to his job on the rip track, same assignment, on May 26, and worked as car helper on his regular assignment until June 21, which includes the period of this dispute. The claimant worked the assigned days of his work week immediately preceding and following the Holiday, May 30, 1955.

The claimants temporarily filled regular positions. The Agreement of August 21, 1954 is clear in its provisions wherein is stated that " \* \* \* each regularly assigned hourly and daily rated employee shall receive eight hours' pay \* \* \* " (emphasis ours) Thus, the agreement limits payment to regularly assigned employees and does not provide for payment to an employee who is temporarily filling a position."

The burden of proof rests upon the employees in this case. See Second Division Award No. 1996 and Third Division Award Nos. 6402, 6650 and 6673, as well as numerous others in all Divisions of the N.R.A.B.

This claim should be denied because it is without agreement support.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 claim for an employee temporarily assigned to a vacancy after having been recalled from furlough must be decided on the same basis as Docket No. 2328, Award No. 2492.

#### AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1957.

#### DISSENT OF LABOR MEMBERS TO AWARD NO. 2493

We are constrained to dissent from the findings and award of the majority.

The instant claimant, by virtue of his seniority as a carman helper, occupied a regular position within the terms of the controlling schedule agreement and, being a regularly assigned hourly and daily rated employee receiving compensation for the days preceding and following the instant Holiday, he was qualified under Article II, Section 3, of the August 21, 1954 Agreement to be compensated as claimed.

R. W. Blake  
Charles E. Goodlin  
T. E. Losey  
Edward W. Wiesner  
James B. Zink