Award No. 3487

Docket No. 3017

2-MP-BM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr. when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Boilermakers)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1.) That under the current Agreement Boilermaker S. H. Popp was improperly denied compensation by the carrier for service required outside of his regular bulletined hours March 9, 1956.

(2.) That accordingly, the Carrier be ordered to compensate the aforesaid employe four (4) hours at his applicable rate (2 hours and 40 minutes overtime rate) account of this denial.

EMPLOYES' STATEMENT OF FACTS: Boilermaker S. H. Popp is employed in the diesel facilities of the Missouri and Pacific Railroad at Kansas City, Missouri. On March 9, 1956 he was working the afternoon of the second shift (4 P.M. to 12 MN.). On March 7, 1956, the carrier summoned Mr. Popp as a witness at an investigation of Locomotive Foreman George L. Staley for March 9, 1956 at 9 A. M. A copy of this instruction is submitted herewith and identified as Exhibit A.

The claimant, for performing this service as instructed, turned in a service card for four (4) hours at his applicable rate (2 hours and 40 minutes at time and one-half) in line with Rule 4 (d). The carrier refused to approve this service card, thereby denying him payment for this service.

This claim has been handled up to and including the highest designated officer of the carrier. Mr. T. Short, then chief personnel officer, agreed in a letter dated October 12, 1956 to hold this case in abeyance for ninety (90) days, subsequent to the issuance of an award on Docket 2561 by your Honorable Board. This letter is submitted herewith and identified as Exhibit B.

In the case of Electrician C. L. McAlister, Machinist A. I. Meredith and Laborer A. Neal, this award was issued January 29, 1958 and it sustained the claimant's claim. This award was #2736, Docket #2561.

To summarize, we have shown that the carrier is entitled to reargue the issues in Award 2736 because of new evidence. We have shown that the agreement is intentionally devoid of a special rule covering the issue in this claim as the result of collective bargaining. We have shown that the claim is not supported by the practice on this property. We have shown that rules cited by the employes have no application to claims of this nature. It follows that this Board has no alternative but to dismiss the claims for lack of any authority upon which it can resolve the dispute.

But if the Board should not deny the claim, then the claim cannot be sustained as presented because the amount requested is unreasonable and excessive for the time and effort expended.

The carrier is firmly convinced that the proper course for this Board is to dismiss the claim because not supported by the rules.

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.

Disposition of this claim is governed by our findings in Award 3484.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June 1960.

DISSENT OF LABOR MEMBERS TO AWARDS 3484 TO 3492, INCLUSIVE

The majority states "We find nothing in the classification of work rules which can be said to afford a reasonable basis for allowing compensation such as is claimed here." Such reasoning, if followed to a logical conclusion, would make it necessary to define even the most minute details involving every type of service to be performed. However, there is no need for specifically defining every possible service to be performed since it is an elementary principle of the law of contract that if the employer calls upon the employe to perform any service the employer thereby creates an obligation to pay for such service if the employe responds. The claimant was called by the carrier to attend an

investigation. He responded and unless he is compensated for such service he is being unjustly dealt with. The service performed lies within the scope of the collective agreement and we submit that a reasonable interpretation of Rule 4 requires that claimant be compensated in accordance with its terms.

/s/ Edward W. Wiesner
Edward W. Wiesner

/s/ R. W. Blake
R. W. Blake

/s/ Charles E. Goodlin
Charles E. Goodlin

/s/ T. E. Losey
T. E. Losey

/s/ James B. Zink
James B. Zink