

Award No. 3491

Docket No. 3047

2-MP-MA-'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
A. F. of L - C. I. O. — (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1) That under the current agreement Machinist V. Skaggs was unjustly dealt with when the Missouri Pacific Railroad Company declined to compensate him for service required outside of his bulletined hours on January 29, 1958.

2) That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate the aforesaid employe in the amount of 4 hours at the pro rata rate for the service required of him outside of his bulletined hours between 9:00 A.M. and 10:30 A.M., January 29, 1958.

EMPLOYEES' STATEMENT OF FACTS: Machinist V. Skaggs, hereinafter referred to as the claimant, was regularly employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, in the diesel facilities at St. Louis, Missouri, on the 11:30 P.M. to 7:30 A.M. shift.

On January 27, 1958, the carrier summoned the claimant as a witness at an investigation of Supervisor F. L. Landrum, which was held on Wednesday, January 29, 1958, to determine cause and responsibility in failing to properly supervise repairs to diesel 8012 on January 24, 1958. The claimant reported as requested and was required to remain at the investigation from 9:00 A.M. to 10:30 A.M. (1½ hours). A copy of the citation of the supervisor and the instructions for the claimant to be present is submitted as Exhibit A.

This claim has been handled up to and including the highest officer so designated by this carrier to handle such cases with the result that he failed to adjust the matter.

The agreement, effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted on the basis of the foregoing statement of facts that this claimant is subject to be compensated as set forth in the above statement of claim under the aforementioned controlling agreement because there is no doubt that the carrier required the service of the claimant outside of his bulletined hours on January 29, 1958.

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, could 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

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ James B. Zink