

Award No. 3560

Docket No. 3083

2-MP-CM-'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 EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than carmen were improperly used to augment the force of two (2) carmen in rerailling box car M.P. 93259 at Belle Plains, Kansas on February 4, 1957.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate Carmen E. R. Mann and J. E. Canatsey in the amount of nine (9) hours at the pro rata rate and four and one-half (4-½) hours at the punitive rate of pay for February 4, 1957.

EMPLOYEES' STATEMENT OF FACTS: Carmen E. R. Mann and J. E. Canatsey, hereinafter referred to as the claimants, are employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, at Coffeyville, Kansas. Claimants are regularly assigned to the 7:30 A.M. to 12:00 Noon and 1:00 P.M. to 4:30 P.M. shift, Monday through Friday, with Saturday and Sunday as rest days. Further, the claimants are regularly assigned members of the wrecking crew. On February 4, 1957, the date on which this dispute arose and is more fully explained below, the claimants worked their regular assigned shift on the repair track at Coffeyville.

On Friday, February 1, 1957, box car M.P. 93259 loaded with wheat was derailed at Belle Plains, Kansas, a distance of some 130 miles from Coffeyville, Kansas, division point of the carrier. The car had two (2) wheels on one end of car derailed. Supervision from Coffeyville, including the master mechanic, trainmaster and roadmaster were dispatched to Belle Plains, Kansas on February 1, 1957. Upon arrival at Belle Plains they secured the service of the train crew and section gang of six (6) men and endeavored to reraill M.P. 93259 by use of frogs and pull from diesel engine. The rerailling of this car was not as easily accomplished as it appeared and the supervision from Coffeyville, the train crew and section crew were unable to reraill this car, and further derailed it and had wheels on other end of car on the ground. Supervision finally gave up on the rerailling job and proceeded back to Coffeyville on February 1, 1957, leaving

2285 of this Division. As in that case, there is no rule providing for a penalty and the Board said that the general rule in such cases is that time for work lost is at the pro rata rate of the position.

This carrier does honor the agreements which it has made with the representatives of its employes and the infliction of a penalty is not necessary to enforce compliance. We do have honest differences of opinion, and in such cases there is no proper room for a penalty. We do find local supervision making errors from time to time, and where that fact is brought to the attention of the proper officers we are usually able to reach some settlement whereby the employes involved are given satisfaction for any loss of earnings involved.

The carrier feels strongly that no penalty can properly be imposed on the carrier under the facts in this case since no rule calls for such penalty, but, in any event, the compensation already allowed claimants is more than adequate by way of penalty and, therefore, this claim should be declined in its entirety.

FINDINGS: The Second Division of the Adjustment Board, based 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.

Parties to said dispute were given due notice of hearing thereon.

Claimants are regularly assigned members of the wrecking crew at Coffeyville, Kansas. On February 4, 1957, carrier called but two members of the Coffeyville wrecking crew to proceed with company motor truck loaded with necessary rerailling equipment to Belle Plaine, Kansas, some 130 miles from Coffeyville, to re-rail a box car laden with wheat.

In rerailling the car, the two members of the wrecking crew were aided by some of a six man section crew assigned to assist in the work of rerailling. It is unquestioned that the members of the section crew performed work contractually assigned to carmen in violation of Rule 119(a) of the applicable agreement. Rule 119 (a) also provides that carmen will be paid for such wrecking service under Rule 7. In Award No. 2222 we held in an analagous situation that a penalty is justified to insure compliance with agreement rules. The two members of the Coffeyville wrecking crew who were assigned to the rerailling job, left Coffeyville at 7:30 A.M.; completed the rerailling job at Belle Plaine at 4:30 P.M., and returned to Coffeyville at 8:30 P.M. Claimants are entitled to be compensated at pro-rata rate for nine hours and at time and one-half for four and one-half hours in accordance with the provisions of Rule 7 of the effective agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1960.