

Award No. 3926

Docket No. 3584

2-MP-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson 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 Car Inspector F. L. Magouirk was unjustly denied compensation for services required and expenses incurred on October 8, 1958.

2. That accordingly, the Carrier be ordered to compensate this employe for eight (8) hours at the straight time rate of pay and reimburse him in the amount of two dollars and fifty cents (\$2.50) for necessary expenses incurred.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector F. L. Magouirk, hereinafter referred to as the claimant, is employed by the Missouri Pacific Railroad Company (IGN), hereinafter referred to as the carrier, at Palestine, Texas and on October 8, 1958, was regularly assigned to work from 8:00 A. M. to 4:00 P. M.

In a letter dated September 10, 1958, claimant was instructed by Master Mechanic S. P. Byrnes to arrange to be in car department office at Taylor, Texas (145 miles from Palestine) at 10 A. M. September 22, 1958 for investigation to determine facts and place responsibility for failure of a journal on GATX 86356 resulting in derailing 8 cars in Train No. 67. The investigation was postponed until 1 P. M. October 8, 1958 and claimant was so notified by Mr. Byrnes in a letter dated September 18, 1958.

Claimant attended the investigation as instructed resulting in his being taken away from his regular assigned duties at Palestine, Texas and incurring expenses in the amount of two dollars and fifty cents (\$2.50) for meals.

cipal and not as a witness. It follows then that there is no agreement support for claim for time lost while attending the investigation, and under the consistent holdings of awards of this and all other Divisions of the National Railroad Adjustment Board there is no basis for contending that claimant should be reimbursed by the carrier for lost wages and/or expenses incurred by him while attending investigation as a principal and not as a witness, following which he was assessed discipline in the form of a letter of reprimand for his responsibility in connection with the derailment which was caused by a journal failure on the car to which he had assisted in applying wheels at Taylor, only 34 miles from point of derailment.

For these reasons this claim must be denied.

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.

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

Claimant was disciplined by notation on his service record for negligence resulting in the derailing of 8 cars and the damaging of an overpass. He stated at the investigation that he understood its purpose, and it is not contended that the discipline was unwarranted or excessive.

There is no doubt of his mutuality or personal interest in the subject of investigation.

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 31st day of January 1962.

DISSENT OF LABOR MEMBERS TO AWARD 3926

The dispute is based on the fact that the claimant was required to perform service without being compensated therefor. 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.

It would appear that the present findings are based on what the majority terms "mutuality or personal interest" rather than on the procedural requirements of the agreement. The findings and award are palpably erroneous.

Edward W. Wiesner

C. E. Bagwell

T. E. Losey

E. J. McDermott

James B. Zink