

Award No. 5100

Docket No. 4220

2-MP-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement W. J. Vaught, axle turner, and J. O. Pierce, machinist helper, were paid holiday pay for Thursday, November 24, 1960 and who were furloughed November 23, 1960.

2. On Thursday, March 23, 1961, Vaught and Pierce were called back to service. On April 11 and 12, 1961 respectively, the amount of holiday pay for Thursday, November 24, 1960 was deducted from their earnings on the last period of March 1961. This claim is for the recovery of such deduction.

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.

Claimants were paid holiday pay for Thanksgiving, November 24, 1960. Carrier claims that Claimants were paid by mistake and the amount of the holiday pay was deducted from Claimants' earnings. This claim is for the recovery of said holiday pay.

The Organization's contention in regard to the alleged violation of Rule 31 of the Agreement by the Carrier for failure to deduct said holiday pay from Claimants' wages within the 60 days' time limit set forth in said rule is without merit because said rule is not applicable to the factual

situation herein, i.e., to a situation where deductions are made by Carrier from Claimants' wages, and this Board is not empowered to extend the application of said Rule 31 beyond its authority.

Concerning the merits of this claim, the issue involved is the question of "availability" as set forth in the "Note" in Section 3, Article III of the '60 Agreement, and inasmuch as the issue and agreement involved herein are similar to the issue and agreement in Award 5095, and for the reasons set forth in said award, this claim will be sustained.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 31st day of March, 1967.