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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6460
Docket No. 6305
2-MP-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman 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 the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 4(e) and 8(b), when Wrecking Crew Member, Carman M. H. McGary, Little Rock, Arkansas, was not called for wrecking service at Paraquet, Arkansas on May 16, 1971.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman McGary in the amount of ten hours, twenty minutes (10'20") at punitive rate for May 16, 1971.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

A wrecking crew of three men was notified at 10:00 P.M. on a Sunday night that they would have to leave at 4:40 A.M. on Monday morning account of derailment. One of the crew was required to drive a cline truck.

The regular assigned cline truck driver named King, was scheduled to work Monday through Friday, 7:00 A.M. to 3:30 P.M., rest days Saturday and Sunday. Carman Smith, was the assigned relief driver on Saturday and Sunday from 7:00 A.M. Saturday to 7:00 A.M. Monday. He was also a regularly assigned member of the wrecking crew.

The carrier made up the three man wrecking crew by calling King to drive the truck. Smith was called as a member of the wrecking crew but not as a truck driver. The third man is not in dispute.

The Organization claims that Smith should have been called as the truck driver; that there was no reason to call King who was on his rest day. It is argued that if this had been done, then claimant would have been the next man up to be called as the third member of the crew.

The carrier declined the claim on the ground that by a hip-pocket understanding, Smith could have been called either as the relief truck driver or from the wrecking crew overtime call board. The carrier relies on the agreement to distribute overtime work equally and cites prior awards that relate to equal distribution of overtime.

The Organization denied knowledge of the hip-pocket understanding and denied that any such rule or agreement existed.

This case is to be decided on the simple fact that Smith was the assigned relief man to drive the truck at the time. We find that he should have been called as the truck driver. The carrier has failed to prove its hip-pocket understanding to the contrary, and has not submitted evidence of any practice in support of such a rule.

There is no evidence in the record to prove that claimant would not have been the next man to be called so we accept the Organization's statement of that fact.

The carrier also has argued that claimant was regularly scheduled to work from 7:00 A.M. to 3:30 P.M. on Monday, but did not work because the Signalmen went on strike at 6:00 A.M. Monday, and he would not cross the picket line. The carrier contends, therefore, that even if claimant should have been called for the wrecking crew, the carrier should get credit for the time that claimant refused to work. This is immaterial. The fact is that claimant would have left at 4:40 A.M., before the strike started, as part of the wrecking crew. The crew worked for ten hours and twenty minutes. Claimant is entitled to compensation for the same period of time as the other two men of the wrecking crew.

It is well established that proper compensation for time not worked shall be at the pro rata rate. Claimant should be compensated for ten hours and twenty minutes at the pro rata rate.

A W A R D

Claim sustained as set forth in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Kellen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1973.