

Award No. 161

Docket No. 163

2-MP-CM-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**RAILWAY EMPLOYEES' DEPARTMENT, A. F. OF L.
(CARMEN)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Claim of H. C. Taylor, Freight car truckman, Council Grove, Kansas, for time while waiting from 4:00 P. M. until 7:25 P. M. at Elmo, Kansas, July 20, 1936.

JOINT STATEMENT OF FACTS: July 20, 1936, Freight Car Truckman H. C. Taylor left Council Grove, Kansas (headquarters point) at 8:50 A. M. on train 85, arriving Elmo, Kansas, 10:55 A. M., rebrassed and repacked B&O car 270343, completed job 12:05 P. M., left Elmo 7:25 P. M., and arrived Council Grove, his home point, at 9:00 P. M. He was not paid for time waiting from 4:00 P. M. to 7:25 P. M. at Elmo, Kansas.

POSITION OF EMPLOYEES: That Missouri Pacific violated provisions of Rule 7, paragraph (a) of current wage agreement, effective July 1, 1936, in denying H. C. Taylor compensation due him, account of being required to wait for passenger train at Elmo, Kansas, from 4:00 P. M. to 7:25 P. M.

Missouri Pacific agreement, effective July 1, 1936, Rule 7 (a)

"An employe regularly assigned to work at a shop, enginehouse, repair track, or inspection point, when called for emergency road work away from such shop, engine house, repair track, or inspection point, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station and straight-time rate for all time waiting or traveling."

We contend that paragraph (a) of Rule 7, as above quoted, is applicable in this case and that H. C. Taylor should be compensated for all time on duty, in accordance with the practice at home station, and be paid straight-time rate for all time waiting or traveling.

It is claimed by management that H. C. Taylor was relieved from duty between 12:05 P. M. and 7:25 P. M. In denying this we refer you to Rule 1, paragraph (a), and Rule 2, paragraph (a), of current wage agreement.

Missouri Pacific agreement, effective July 1, 1936, Rule 1 (a):

"Eight hours of service shall constitute a day's work."

"RULE 2 (a)

"Where but one shift is employed, unless otherwise provided for, the starting time will not be earlier than 7:00 o'clock nor later than 8:00 o'clock, A. M. or P. M."

of 3 hours and 25 minutes, as the total time he was relieved from duty, viz.:—from 12:05 P. M. to 7:25 P. M. is in excess of five-hour period specified in Rule 7 (b).

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 employees 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.

"RULE 7

"(a) An employe regularly assigned to work at a shop, engine-house, repair track, or inspection point, when called for emergency road work away from such shop, engine house, repair track, or inspection point, will be paid from the time ordered to leave home station until his return for all time worked in accordance with the practice at home station and straight-time rate for all time waiting or traveling.

(b) If during the time on road a man is relieved from duty for five (5) hours or more, such relief time will not be paid for provided that in no case shall he be paid for less than the eight (8) hours constituting his regular assignment at the home station (when such irregular service prevents the employe from making his regular daily hours at home station) and in addition thereto for the actual time working or traveling before or after his regular assigned hours at the home station. Where meals and lodging are not provided by the company, actual necessary expenses will be allowed.

(c) Employes will be called as nearly as possible one hour before leaving time, and on their return will deliver tools at point designated.

(d) If required to leave home station during overtime hours, they will be allowed one hour preparatory time at straight-time rate.

(e) Wrecking service employes will be paid under this rule, except that all time working, waiting or traveling on Sundays and holidays will be paid for at rate of time and one-half, and all time working, waiting or traveling on week days after the recognized straight-time hours at home station will also be paid for at rate of time and one-half."

This rule provides that a man on emergency road work would be paid in accordance with practices at his home point which does not permit relieving a man during his regular bulletined hours to equalize the time. Therefore, the time deducted for relief period between the hours of 12:05 P. M. and 4:00 P. M. for the purpose of computing rest period was not proper.

The time from 4:00 P. M. to 7:25 P. M. is not deductible under the rule.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1937.