

Award No. 708

Docket No. 714

2-MP-FO-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: A. That on date of July 26, 1941, at Jefferson City, Missouri, the carrier did violate Rule 4 (c), of current wage agreement by compensating Benjamin Stephens at pro rata rate for service rendered as stationary fireman, 3:00 P. M. to 11:00 P. M.

B. That Benjamin Stephens, fire knocker, be compensated under provisions of Rule 4 (c) at punitive rate for 8 hours service rendered as stationary fireman, 3:00 P. M. to 11:00 P. M. July 26, 1941.

EMPLOYEES' STATEMENT OF FACTS: Benjamin Stephens is an employe of the carrier at Jefferson City, Missouri in capacity of fire knocker on third shift, which begins work at 12:00 Midnight.

On date of July 26, 1941, Mr. Stephens was required to report at 3:00 P. M. to fire stationary boiler on 3:00 P. M. to 11:00 P. M. shift; he was compensated at stationary fireman rate on pro rata basis.

POSITION OF EMPLOYEES: It is our position that under provisions of Rule 4 (c) of current wage agreement:

"Rule 4 (c) Employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two hours' work or less. If held on duty in excess of two (2) hours time and one-half will be allowed on the minute basis."

Benjamin Stephens was entitled to punitive rate for service rendered as stationary fireman on July 26, 1941, 3:00 P. M. to 11:00 P. M. shift.

Mr. Stephens is regularly assigned fire knocker on 12:00 Midnight to 8:00 A. M. shift. On July 26, 1941, he was required to report at 3:00 P. M. (nine hours in advance of regular starting time) to fire stationary boiler on 3:00 P. M. to 11:00 P. M. shift, this assignment of one day only to fill vacancy created by regularly assigned fireman laying off for one shift. Mr. Stephens was compensated at stationary fireman rate on pro rata basis. In declining claim, carrier (see employes' Exhibit G) bases their decision on provisions of Rule 15 of current wage agreement.

Rule 15. Employes accepting a position, in the exercise of their seniority rights, will do so without causing extra expense to the railroad.

It is our position that Rule 15 is not applicable in this instant case, and further, that Rule 4 (c) is only rule applicable.

Rule 15. Employees accepting a position, in the exercise of their seniority rights, will do so without causing extra expense to the railroad.

B. E. Stephens, shop laborer, seniority dating from July 1, 1940 and regularly working on third shift from 12:00 Midnight to 8:00 A. M. was notified, following Koelling being granted permission to lay off, to come to work on the second trick stationary fireman's job at 3:00 P. M., Saturday, July 26, 1941. Stephens had worked the previous day, July 25th, as laborer on the third shift from 11:00 P. M., Friday, July 25th, to 7:00 A. M. Saturday, July 26th. Upon completion of his tour of duty as stationary fireman from 3:00 P. M. to 11:00 P. M., July 26th, he came out to protect his regular shift as laborer from 12:00 Midnight Saturday, July 26th, to 8:00 A. M., Sunday, July 27th.

Koelling also laid off the following day, Sunday July 27th and the vacancy caused by his absence on this day was filled by S. W. Cardwell, a regular assigned boilerwasher, whose regular assignment, however, does not include Sundays, hence his availability for relieving Koelling on that date.

Both Stephens and Cardwell were paid for the services they performed as stationary firemen in place of Koelling on July 25 and 26, 1941, at the stationary fireman's rate of \$129.45 per month.

POSITION OF CARRIER: There are no rules of our wage schedule agreement making it mandatory to grant employees' request to absent themselves from their regular assignment, particularly on short notice such as occurred in this instance. It is a practice, however, to permit employees to lay off upon request when relief can be provided, either by utilizing the services of extra employees if they be available, or by rearranging the assignments of regular forces. It never was the practice, however, either by schedule rule or otherwise to penalize the carrier to permit regular assigned employees to lay off at their option.

In the presentation of this case, the employees cite Rule 4 (c) of wage schedule agreement dated November 1, 1934 to sustain their position. This rule reads:

"Rule 4 (c) Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less. If held on duty in excess of two (2) hours time and one-half will be allowed on the minute basis."

We do not consider this rule as being applicable to the case herein presented. The claim is filed on behalf of Stephens, a fire knocker. Stephens was not called to perform work as a fire knocker. He was called, as heretofore stated, to perform work in an entirely different classification—that of stationary fireman—which was in fact a promotion in that he worked on a position paying a higher rate of pay than his regular assignment as a fire knocker.

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 dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

This dispute involves the application of Rule 4 (c) to an employe in seniority Sub-division B when used temporarily to perform work in Sub-division A of Rule 11.

This transfer was within the provisions of the agreement. The employe was "called to perform work not continuous with the regular work period." (Rule 4 (c).)

The rule cited by the employes supports the claim.

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 March, 1942.