

Award No. 875

Docket No. 799

2-MP-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee H. B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That on date of Sunday, March 29, 1942, in Nevada, Missouri, carrier violated provisions of Rule 10 current wage agreement by compensating Machinist B. J. Reese at pro rata rate for first shift change.

(b) That Machinist B. J. Reese be compensated punitive rate for first shift change date of March 29, 1942.

EMPLOYES' STATEMENT OF FACTS: On date of Sunday, March 29, 1942 at Nevada, Missouri it was necessary to fill vacancy created by second shift inspector, whose regular assigned hours are 4:00 P. M. to 12:00 midnight. Machinist B. J. Reese, regular six day per week employe, hours 7:30 A. M. to 4:30 P. M., was called to fill vacancy for which service he was compensated at pro rata rate.

POSITION OF EMPLOYES: That Rule 10 of current wage agreement provides that employes be compensated punitive rate for first shift of each change.

Rule 10. Employes changed from one shift to another will be paid overtime rates for the first shift of each change. This will not apply when returning to their regular shift nor when shifts are exchanged at the request of employes involved or in the exercise of their seniority rights.

Your attention is directed to the fact that the only exceptions contained in Rule 10 whereby employes are not entitled to punitive rate are when returning to their regular shift, or shifts are exchanged at request of employes involved or in the exercise of their seniority rights.

Carrier in their letter of May 16, 1942, (submitted and indicated as employes Exhibit C), declining claim bases position on provisions of Rule 3 (b) of current wage agreement.

Rule 3 (b) Work performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas

larly when they make reference to Rule 10 of the agreement to sustain their contention, that they are going far afield by seeking an award that would apply a rule and penalty upon the carrier to a condition of employment that was never so intended by the representatives of the management and the employees when the rules of the agreement were negotiated. If the Board would acquiesce in the employees' contentions they would, in effect, be placing an interpretation, so to speak, on a rule that would have the effect of, in reality, writing a new rule thus creating a condition of employment not contemplated by the law in its delegation of functions to the National Railroad Adjustment Board.

There is submitted as carrier's Exhibit B statement of force employed at the Nevada, Mo. roundhouse, and carrier's Exhibit C seniority roster of machinists at Nevada as of July 1, 1942.

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.

Claimant had no regular assignment on Sunday. Claimant filled the place of McFarland, a regularly assigned Sunday man, on Sunday, March 29. Under these circumstances it cannot be found that claimant was changed from one shift to another within the meaning of Rule 10. Rule 3 (b) is applicable, and under this rule claimant was entitled to be compensated on the same basis as McFarland, whose place he filled.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1942.