

Award No. 1631
Docket No. 1535
2-M&SL-FO-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 15, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen and Oilers)**

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, the following named laborers were improperly paid when the Carrier compensated them at the rate of \$1.00 per hour for the number of hours set forth after their names, for service performed during the months of May, June and July, 1950:

Laborer George Rosengren	—	360	hours
" Gilbert Nablo	—	323½	"
" Elton White	—	352	"
" Raymond Russell	—	360	"
" Fred Yeager	—	360	"
" Samuel Morrow	—	360½	"
" Charley Benson	—	152	"
" Frank Dougherty	—	326½	"

2. That accordingly the Carrier be ordered to compensate the aforesaid laborers the difference in the established rate for laborers of \$1.225 and the rate they were paid for the aforementioned hours.

EMPLOYEES STATEMENT OF FACTS: Prior to May 22, 1950, Laborers George Rosengren, Gilbert Nablo, Elton White, Raymond Russell, Fred Yeager, Samuel Morrow, Carman Charley Benson and Carman Helper Frank Dougherty, hereinafter referred to as the claimants, were furloughed as employees of the M&StL Railway at Marshalltown, Iowa.

On or about May 20, 1950, they were called and asked if they cared to come to work on Monday, May 22, 1950, and help dismantle some old shop buildings.

At the time they were called, they were advised they would receive the established laborer's rate of pay, which, at that time, was \$1.225 per hour.

However, even if they had protested the rate, that does not alter the fact that they were advised before they commenced work that the rate was to be \$1.00 per hour, and they went to work with that very definite knowledge.

Carrier now calls attention to the following facts:

1. The work performed by the instant claimants was not work coming within the scope of the "Foremen and Oilers' Agreement dated February 1, 1945." Carrier violated no article or rule of its agreement with the firemen and oilers' organization, nor has the firemen and oilers' committee progressed the claim on the basis of any rule violation of their agreement.
2. The instant claimants were unemployed furloughed employes and were glad to get the work. They so indicated to Mr. Needham when they were employed.
3. There was no misunderstanding with respect to the hourly wage rate they were to be paid. Each and every one of them understood the rate was to be \$1.00 per hour, and they were paid that rate.

Carrier believes the instant claim to be entirely without merit and respectfully requests your Honorable Board to so find.

FINDING: 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.

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

Claimants were furloughed laborers called to help dismantle some old shop buildings. The laborer's rate of pay is \$1.225 per hour. Carrier paid only \$1.00 per hour. The claim here made is for the difference.

Carrier asserts that it employed claimants at \$1.00 per hour and that each so understood what he was to receive when he went to work. Irrespective of this fact, the carrier cannot avoid the negotiated laborer's rate in the collective agreement. As furloughed employes, claimants were entitled to the benefits of that agreement and the carrier cannot properly reduce the rate by agreement with individual employes. It has bound itself to pay \$1.225 per hour for laborer's work and it cannot destroy the collective agreement by dealing directly with employes in order to impose a lesser rate of pay. An affirmative award is required.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 26th day of January, 1953.

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

(The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the interpretation was rendered.)

**INTERPRETATION NO. 1 TO AWARD NO. 1631,
DOCKET NO. 1535**

NAME OF ORGANIZATION: System Federation No. 15, Railway Employees' Department, A. F. of L. (Firemen and Oilers.)

NAME OF CARRIER: The Minneapolis and St. Louis Railway Company.

Upon application of the representatives of the employees involved in the above award that this Division interpret the same in light of the dispute between the parties as to its meaning, as provided by Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The "Question for Interpretation" as stated by the organization is "Do the words in Award No. 1631 'Claim sustained' apply to Claimants Gilbert Nablo, Raymond Russell and Fred Yeager."

The claim originated in May, June and July, 1950. The award of this Division issued as of January 26, 1953. Pending a final adjustment of the claim, three of the claimants retired under the provisions of the Railroad Retirement Act, as follows: Gilbert Nablo on September 4, 1951; Raymond Russell on April 11, 1951; and Fred Yeager on May 28, 1951. The carrier contends that the award does not apply to the three employees who are no longer in the service of the carrier.

The award decides that claimants were not paid the amounts earned in May, June and July, 1950 under their collective agreement with this carrier and directs that they be paid the amounts earned. The fact that they retired pending the processing of their claims has no bearing whatsoever upon the award or its enforcement. If the position of the carrier is the correct one, a carrier's delay in handling claims could operate to its own advantage. Rights which have accrued under an agreement ordinarily are not affected by the subsequent retirement of the employee in the absence of provisions in the contract so providing. There is no language in the award from which it can be inferred that it applied only to claimants in the employ of the carrier at the time the award was issued. The award applies to these retired employees in the same manner as it applies to the other employees involved who remained in the service of the carrier.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of July, 1953.

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