

Award No. 2082
Docket No. 1897
2-MP-F&O-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That under current agreement Rule 25, T. P. Coleman was improperly compensated for service performed as Engine Watchman at Smackover, Arkansas during the period of September 5, 1953 and December 5, 1953.

2—That accordingly, the Carrier be ordered to additionally compensate the Claimant for hours worked in excess of eight (8) on September 5, 12, 19, 26, October 3, 10, 17, 24, 31, November 7, 14, 21, 28 and December 5, 1953, in accordance with Rule 25 of controlling agreement.

EMPLOYEES' STATEMENT OF FACTS: T. P. Coleman (hereinafter referred to as the claimant) was employed by the Missouri Pacific Railroad Company at Smackover, Arkansas, as an engine watchman and was required to work ten (10) hours on September 5, 12, 19, 26, October 3, 10, 17, 24, 31, November 7, 14, 21, 28 and December 5, 1953, and was paid engine watchman rate at pro rata rate. The carrier declined to pay the claimant the proper rate (overtime rate) for hours in excess of eight (8) hours.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant holds seniority as an engine watchman at Smackover, Arkansas under provisions of controlling agreement, and under Rule 25 worked as engine watchman on dates heretofore mentioned, however was not paid at the pro rata overtime rate as provided for in the rule:

"ENGINE WATCHMEN AT OUTLYING POINTS:

Rule 25(a)—Engine Watchmen at outlying points shall be paid an hourly basis. A day's work shall be not less than eight (8) hours.

(b) The provisions of Section 2 of Rule 2 of this agreement establishing a five-day week shall be applicable to engine watchmen at outlying points.

of 8 hours on any day to engine watchmen at outlying points, the proper procedure is by negotiation.

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 the dispute involved herein.

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

There is ambiguity in the wording of the rule in question. However, this question was passed upon by this Division in its Award 1839, which concerned the same parties and which sustained the contention of the organization relative to the rate of pay for hours worked in excess of eight hours on any day by engine watchmen at outlying points.

While we value the weight of precedent we do not feel absolutely bound by same. The old adage that "two wrongs never make a right" still holds true. Cases precedent must be carefully considered and if they are in point and it is not strongly shown that to follow same would be error, we believe that they should be followed. There must be some degree of consistency in our awards. This Board should never be hesitant to reverse its position, when to do otherwise would amount to placing a stamp of approval on an action that we later recognize was wrong in the first place.

As we previously stated, the instant case is largely concerned with ambiguity of language. We believe that ratification of our Award 1839 is proper and not in error.

AWARD

Claim sustained at the time and one-half rate for hours worked in excess of eight on such dates claimed when claimant worked in excess of eight hours.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March, 1956.