Award No. 2251
Docket No. 2164
2-MP-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Missouri Pacific Railroad Company elected to use Lead Carman H. P. Guynes on his rest days Saturday and Sunday, December 11th and 12th, 1954 away from his home point and has declined to properly compensate him therefor under the current agreement.

2. That accordingly the Missouri Pacific Railroad Company be ordered to additionally compensate this employe in the amount of 8 hours at the time and one-half rate on Saturday and in the amount of 4 hours at the straight time rate on Sunday on the aforesaid dates.

EMPLOYES' STATEMENT OF FACTS: H. P. Guynes, lead carman, Newport, Arkansas, hereinafter referred to as the claimant, was told by the carrier to go to St. Louis, Missouri, to appear before the general claims attorney on Sunday, December, 12, 1954, and to be a witness in the law suit of A. L. Adams, switchman, vs. Missouri Pacific Railroad, starting on Monday, December 13.

In order to be there on Sunday morning, the claimant was required to leave home about 5:00 P. M. in the evening of December 11, 1954, arriving in St. Louis shortly after 11:00 P. M. The carrier did not compensate the claimant anything for December 11th, but did compensate him 8-hours for December 12, both of these days were the claimant's regular assigned rest days.

The claimant remained in St. Louis until about 2:00 P. M. on Wednesday December 15, leaving on Train No. 25, arriving at Newport about 8:00 P. M.

The claimant could have left home as late as 3:00 A. M., Sunday morning and arrived in St. Louis about the time of his appointment with the general claims Attorney; however, he did not desire the loss of all his rest and be in no condition to discuss this case with the general claims attorney, but

The carrier submits that this claim is not supported by the agreement and that it is entirely lacking in merit and therefore must be declined.

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 said dispute were given due notice of hearing thereon.

Claimant is assigned as a lead carman at Newport, Arkansas, Monday through Friday, with Saturday and Sunday as rest days. On Saturday, December 11, 1954, claimant departed from Newport for St. Louis, Missouri, for conference with carrier's general attorney pertaining to litigation to be heard in court on Monday, December 13, 1954. Claimant was released from court attendance on Thursday, December 15, 1954, and he returned to Newport that same day. Claimant was paid one day's pay for Monday, December 13, through Wednesday, December 15, in addition to his expenses. Claimant contends that he should be paid eight (8) hours at the time and one-half rate for Saturday and Sunday, December 11 and 12, his rest days. The applicable rule is:

> "Employes taken away from their regular assigned duties at the request of the Management to attend court, or to appear as witnesses for the railroad, will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place with a minimum of one (1) day's pay for each day held at court, and in addition, necessary expenses while away from headquarters. Any fee or mileage accruing will be assigned to the railroad." Rule 19, current agreement.

Rule 19 is a special rule dealing with a specific subject. As such it controls over general rules that might have some application in the absence of a specific rule. The parties to the agreement now before us have seen fit to contract with reference to compensation for attending court or appearing as witnesses for the carrier. This eliminates all contentions grounded on any theory of implied contracts, quantum meruit or equitable principles. The very purpose of Rule 19 is to confine the rights of the parties on the subject dealt with to the scope of the language contained in it. To expand or restrict its meaning by a strained interpretation would constitute nothing less than a rewriting of the rule.

We point out that the work and overtime rules were intended to apply to the work usually and traditionally performed by the craft of which the employe is a member. If this were not so, there would be no reason for negotiating rules dealing with special subjects such as the one dealing with attending court or appearing as a witness for the carrier. In the shop craft organizations the work contemplated by the general rules of their agreements is that set forth in the classification of work rules. When the carrier calls upon an employe to give of his time in its behalf for some other purpose, it is either covered by a special rule or treated as incidental to the employe's regular employment. When a special rule is negotiated and its subject is thereby removed from the status of an incident of the employement, the rights of the parties are limited to plain meaning of the language employed.

Turning to Rule 19, we find that the very first sentence of the rule limits its application to employes "taken away from their regular assigned duties." The rule contemplates only that an employe requested by management to attend court or appear as a witness in its behalf shall be compensated for

any time lost from his regular work assignment with a minimum of one day's pay for each day held at court. The rule does not contemplate pay for rest day work except where it is involved in calculating the minimum compensation provided by the rule. In the present case, claimant was paid for each day he was held at court which involved each day he was away from his regular work assignment. Not being entitled to any pay under the rule for attending court or appearing as a witness on carrier's behalf on a rest day, a claim for time and one-half for so doing is without merit. While it may be argued that the rule places unreasonable burdens on the employes without compensation therefor, we are bound by its plain terms. Any claimed inequities may afford a basis for negotiation but they cannot properly be used to give a meaning to a rule which is contrary to its plain terms.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1956.

DISSENT OF LABOR MEMBERS TO AWARD No. 2251

In our opinion the findings and award of the majority are erroneous.

The majority contends that "The parties to the agreement now before us have seen fit to contract with reference to compensation for attending court or appearing as witnesses for the carrier. This eliminates all contentions grounded on the theory of implied contracts . . ." The majority ignores the fact that the parties to the agreement has not contracted with reference to compensation for appearing as witnesses for the carrier on rest days and that there is therefore an implied contract covering this matter. It has been held that it is necessary to adjudicate the matter of implied contract where the schedule does not particularly specify the compensation. (See Award 1438) It cannot be said properly that to supply a missing but implied term of contract amounts to rewriting Rule 19, which deals with compensation for employes taken away from their regular assigned duties to appear as witnesses for the railroad.

Rule 3(b) protects an employe against being required to render service on his assigned rest days without being compensated therefor. As was stated in the findings in Award 1438, it is an elementary principle of the law of contract that "if the employer calls upon the employe to perform any service the employer thereby creates an implied contract to the effect that if the employe responds he will be paid for such service."

The claimant rendered service for the carrier on his rest days and under the terms of Rule 3 (b) should have been paid at the rate of time and one-half for such service as claimed.

George Wright
R. W. Blake
C. E. Goodlin
Edward W. Wiesner
T. E. Losey