

**Award No. 2957**

**Docket No. 2803**

**2-MKT-CM-'58**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee T. A. Burke when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Carmen)**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
OF TEXAS**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement Carman Helper Hy. Woodle was improperly compensated for service rendered on his regular assigned rest day on October 9, 1956.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Carman Helper in the amount of four hours at the applicable rate.

**EMPLOYEES STATEMENT OF FACTS:** Hy Woodle hereinafter referred to as the claimant, was regularly employed as a carman helper by the Missouri-Kansas-Texas Railroad Company—Missouri-Kansas-Texas Railroad Company of Texas, hereinafter referred to as the carrier, at St. Louis, (Baden) Missouri. Claimant was regularly assigned to 7:00 A.M., to 3:00 P.M., shift, Thursday through Monday, rest days Tuesday and Wednesday.

During the period in which October 9, 1956, fell, Carman Helper L. H. Davis was on his vacation. Carman Helper G. L. Mayberry was the assigned vacation relief employe to fill the position of Helper Davis while he was on vacation. Helper Mayberry failed to show up for work on Tuesday, October 9, 1956, one of claimant's rest days. Claimant was called to work on this day, on the 7:00 A.M., to 3:00 P.M., shift, to fill Mayberry's position, for which service he was compensated at the pro rata rate of pay for eight (8) hours.

This claim has been appealed as provided for in the controlling agreement, effective September 1, 1949, and having discussed it thoroughly with the high-

and each of them, respectfully request the Second Division, National Railroad Adjustment Board, deny said claim, and grant said railroad companies, and each of them, such other relief to which they may be entitled.

**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.

The claimant was regularly employed as a carman helper, Thursday through Monday, with rest days Tuesday and Wednesday.

On Tuesday, October 9, 1956, Carman Davis was on his vacation. Carman Helper Mayberry was the assigned vacation relief employe to fill Davis' position while he was on vacation. On Tuesday, October 9, 1956, Mayberry failed to show up. Claimant was called to work to fill Mayberry's position. He was compensated at the pro rata rate of pay for eight hours. He claims overtime because October 9 was a rest day on his regular assignment.

Claimant did not have to accept the work on another man's assignment. He asked for it and the carrier was obligated to give him that work. Having accepted the new assignment, he assumed the work days, hours of service, and rest days of that position. Award No. 1804, Second Division.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1958.

#### DISSENT OF LABOR MEMBERS TO AWARD NO. 2957

It is correctly stated in the findings that "Claimant was called. . . ." However the statement that "He asked for it . . ." is not only in conflict with the first statement but is not true.

Basing the instant findings on Award No. 1804 discloses that the agreement governing in the instant case was ignored. Award No. 1804 involved a different agreement, a different railroad and a different set of facts. Had the instant findings been based on the controlling rules of the governing agreement the claimant would have been compensated as claimed.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner