

**Award No. 3285
Docket No. 2914
2-MP-CM-'59**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. (a) That the Carrier failed to comply with the procedural requirements of the current agreement for handling grievances.

(b) That the Carrier violated the controlling agreement, particularly Rules 26 and 116, at Nevada, Missouri on June 1, 2 and 3, 1956 when they employed a Carman Helper as a Carman.

2. That accordingly, the Carrier be ordered to:

(a) Allow the claim as presented.

(b) Additionally compensate Carmen C. E. Ault, M. C. Trainor and R. E. Place eight (8) hours each at the applicable time and one-half rate of pay for the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, maintains a repair track and car inspector force at Nevada, Missouri. On Friday, June 1, 1956, Car Inspector E. W. Leblin reported off sick and asked that he be off on the 2nd and 3rd of June so that he might recuperate, and as his rest days were June 4th and 5th, he advised he would be back to work following his rest days. Mr. Leblin's regular weekly assignment is Wednesday through Sunday, second shift, 3:00 P.M. to 11:00 P.M., rest days Monday and Tuesday.

Carrier's General Foreman Gott called in furloughed Carman Helper E. R. Rowland and assigned him to fill the vacancy created by Car Inspector

such employe whose shift was changed at the rate of time and one-half for the first shift of the change strictly in accordance with Rule 10.

If the temporary vacancy could not be filled as outlined in items 1 or 2, then if the vacancy was known to be for three days or more the carrier was privileged to temporarily advance an apprentice or helper to mechanic to fill said temporary vacancy, as provided in Item 3, which was done in the instant case strictly in accordance with Section 1(d) of the Carmen's Set-Up Agreement quoted on page 12 of this submission. See copy of said agreement submitted herewith as carrier's Exhibit F.

We believe it is appropriate to remind your Board that the burden of proof in the instant case rests upon the employees. This claim rests upon the unsupported allegation of the employees that the carrier, during the negotiation of the implementing agreements establishing a 40-hour work week on this property, agreed that all temporary vacancies in regularly assigned positions must be filled from the overtime board, notwithstanding the availability of (1) extra or furloughed employees for use at the straight time rate, or (2) the right of the carrier to transfer an employe from another shift pursuant to Rule 10, or (3) **the right under existing agreements, understandings and practice to temporarily advance helpers or apprentices to mechanics.** See Second Division Awards No. 1996 and No. 2042, Third Division Awards No. 6650 and No. 6673 and Fourth Division Award No. 1057 in Re: Burden of Proof.

The carrier categorically denies that it ever agreed to fill all temporary vacancies from the overtime board for the first three days or for any other period.

For the reasons fully set forth in this submission, there is no basis for these claims and they must, therefore, be denied.

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 has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In progressing this claim on the property there was substantial compliance with procedural requirements of the applicable agreement so that the interests of the parties were protected. The carrier is not properly chargeable with the failure of the local chairman to receive the master mechanic's denial of the claim where the evidence shows, as in this case, that the letter was correctly addressed and mailed. The fact that the master mechanic's denial of the claim preceded the date of the local chairman's appeal is immaterial under the established facts.

There is irreconcilable conflict with respect to the validity of the carrier's method of filling vacancies as set forth in its letter of May 21, 1954 and the federation's claim of understanding that vacancies of not more than three days during would be filled from the overtime board. We do not find support in the agreements relied on by the carrier for its action in upgrading

and assigning Helper Rowland to fill the vacancy of Car Inspector Leblane on the three days in question. Mechanics were available on the overtime board to fill the vacancy in question and our reasoning in Award No. 2848, in which the principal points raised by the carrier in the instant docket were considered, is also applicable here.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1959.

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

(The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when interpretation was rendered.)

**INTERPRETATION NO. 1 TO AWARD NO. 3285
DOCKET NO. 2914**

NAME OF ORGANIZATION: System Federation No. 2, Railway Employees' Department, A. F. of L.-C. I. O. (Carmen).

NAME OF CARRIER: Missouri Pacific Railroad Company.

QUESTION FOR INTERPRETATION: The carrier, pursuant to the provisions of Section 3, First (m) of the Railway Labor Act, as amended, has requested the Board to interpret its Award No. 3285 in the light of a dispute which has arisen with respect to the correct amount of compensation payable thereunder.

The carrier maintains that it correctly allowed each of the three claimants eight (8) hours at the straight time rate, whereas the employees contend the allowance should have been made at the time and one-half rate.

The claim as initially submitted here asked that the carrier be ordered to compensate claimants for eight (8) hours each at the applicable time and one-half rate of pay. The carrier contended there was no basis for the claim. The discussions of the parties did not otherwise touch the subject of compensation, and our award did not in so many words mention the rate to be applied but simply stated "Claim sustained".

The scope of our pronouncement is governed by the findings on which it is based. The findings stated:

"We do not find support in the agreements relied on by the carrier for its action in upgrading and assigning Helper Rowland to fill the vacancy of Car Inspector Leblin on the three days in question. Mechanics were available on the overtime board to fill the vacancy in question and our reasoning in Award No. 2843, in which the principal points raised by the carrier in the instant docket were considered, is also applicable here."

Award No. 2843, involved a similar question between the same organization and carrier. Claim was made on behalf of Carman Brannans for time and one-half and the claim was sustained at pro rata rate.

The correct rule which has been applied in numerous awards of this Board is that time for work lost is the pro rata rate of the position. No

reason was given why the general rule applicable to cases such as this one should not apply. The findings having referred with approval to Award No. 2843 in which the pro rata rate was allowed, we interpret Award No. 3285 to require the carrier to allow each of the three named claimants eight (8) hours at straight time rate.

Referee James P. Carey, Jr., who sat with the Division as a member when Award No. 3285 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1960.