

Award No. 3485
Docket No. 3010
2-MP-MA-'60

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 EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

- 1) That under the current agreement Machinist Lester D. Ford was unjustly dealt with when the Carrier declined to compensate him for service required outside of his bulletined hours (rest day) December 11, 1956.
- 2) That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Machinist Lester D. Ford at the overtime rate for the service required of him outside of his bulletined hours (rest day) between 2:30 P. M. and 5:30 P. M., December 11, 1956.

EMPLOYES' STATEMENT OF FACTS: Machinist Lester D. Ford, hereinafter referred to as the claimant, was regularly employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, in the diesel facilities at Atchison, Kansas, and on December 11, 1956 the claimant, who was on his rest day, was required by the carrier to be present at the investigation of Hostler Wilmer Pruitt to determine the guilt of Mr. Pruitt for allegedly putting flat spots on wheels of diesel on Train #562. The claimant reported as requested by the carrier and was required to remain at the investigation from 2:30 P. M. to 5:30 P. M., a total of three hours.

The claimant, for performing this service as instructed, turned in a service card for pay in the amount of three (3) hours at the time and one-half rate, which the carrier declined to pay.

This claim has been handled up to and including the highest designated officer of the carrier, who failed to adjust it.

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

The carrier is firmly convinced that the proper course for this Board is to dismiss the claim because not supported by the rules.

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.

Disposition of this claim is governed by our findings in Award 3484.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June 1960.

DISSENT OF LABOR MEMBERS TO AWARDS 3484 TO 3492, INCLUSIVE

The majority states "We find nothing in the classification of work rules which can be said to afford a reasonable basis for allowing compensation such as is claimed here." Such reasoning, if followed to a logical conclusion, would make it necessary to define even the most minute details involving every type of service to be performed. However, there is no need for specifically defining every possible service to be performed since 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 obligation to pay for such service if the employe responds. The claimant was called by the carrier to attend an investigation. He responded and unless he is compensated for such service he is being unjustly dealt with. The service performed lies within the scope of the collective agreement and we submit that a reasonable interpretation of Rule 4 requires that claimant be compensated in accordance with its terms.

/s/ Edward W. Wiesner
Edward W. Wiesner

/s/ R. W. Blake
R. W. Blake

/s/ Charles E. Goodlin
Charles E. Goodlin

/s/ T. E. Losey
T. E. Losey

/s/ James B. Zink
James B. Zink