

**Award No. 3488**

**Docket No. 3020**

**2-MP-CM-'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.**

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**PARTIES TO DISPUTE:**

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

**MISSOURI PACIFIC RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the controlling agreement was violated when Car Inspector J. T. Marsbach was unjustly dealt with when the Missouri Pacific Railroad Company declined to pay him for service rendered outside of his bulletined hours on July 11, 1957.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate the aforesaid employe a total of eighteen (18) hours at the overtime rate.

**EMPLOYEES' STATEMENT OF FACTS:** Carman J. T. Marsbach, hereinafter referred to as the claimant, employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, was regularly assigned as a car inspector at Horace, Kansas on the third shift, 12 Midnight to 8 A. M., assigned work week Friday through Tuesday, rest days Wednesday and Thursday.

The claimant was ordered by Mr. F. M. Crump, assistant superintendent who is located at Pueblo, Colorado, to appear as a witness at an I.C.C. investigation in Pueblo, Colorado on Thursday, July 11, 1957, regarding a train accident which had occurred at Sheridan Lake, Colorado. The claimant, following orders of the carrier, left his home at Horace, Kansas on Missouri Pacific Train #11 on July 11, 1957 at 5 A. M.

After attending the I.C.C. investigation, the claimant was instructed to return to his home point on Missouri Pacific Train #12, arriving at Horace at 10 P. M. on July 11, 1957—comprising a total of eighteen (18) hours' service to the carrier on his rest day. Expenses of \$3.25 were allowed for meals on this trip, but the carrier refused any compensation for the eighteen (18) hours the claimant was required by the carrier to be away from home on his rest day.

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

But if the Board should not deny the claim, then the claim cannot be sustained as presented because the amount requested is unreasonable and excessive for the time and effort expended.

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 No. 3484. Rules 4(g) and 7(a) relied on by claimant relate to work and, as stated in the above-mentioned Award, attendance at an investigation does not constitute work within the meaning of such rules.

#### **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