Award No. 3492
Docket No. 3049
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.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Car Inspectors M. D. Marcantel and A. T. Smirl were unjustly dealt with when the Carrier declined to compensate them for service required and performed outside of their bulletined hours on February 13, 1958.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate the aforesaid employes thirteen (13) hours each at the time and one-half rate for service rendered outside of their regularly assigned bulletined hours.

EMPLOYES' STATEMENT OF FACTS: Car Inspectors M. D. Marcantel and A. T. Smirl, hereinafter referred to as claimants, are regularly assigned and employed by the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, as car inspectors at Lake Charles, Louisiana, with working hours of 11:00 P.M. to 7:00 A.M. They worked that shift on February 12, 1958.

Claimants were picked up at the Lake Charles Shop on the morning of February 13, 1958 at 9:00 A.M. by the assistant trainmaster, Mr. E. F. Fischer and required to go to Alexandria, Louisiana as carrier witnesses in an investigation held for train crew of Train No. 890. They were returned to Lake Charles at 10:00 P.M. same date, February 13, 1958.

At the time of claimants return to Lake Charles at 10:00 P.M. on February 13, 1958 they had been on duty for approximately twenty-five (25) hours. They were therefore allowed to go home for needed rest and other employes called to work their shift on that date. They were compensated for their regular shift 11:00 P.M. to 7:00 A.M. on February 13, 1958, however, carrier refused to allow them compensation for the thirteen (13) hours that they were in the service of the carrier as carrier witnesses.

Claim for service performed for the carrier outside of their bulletined hours as instructed by the carrier was made in favor of the claimants, however, this claim was denied by the carrier.

This claim has been handled with the carrier up to and including its highest designated officer.

the result of collective bargaining We have shown that the claim is not supported by the practice on this property. We have shown that rules cited by the employes have no application to claims of this nature. It follows that this Board has no alternative but to dismiss the claims for lack of any authority upon which it can resolve the dispute.

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 these claims is governed by our findings in Award 3484.

AWARD

Claims 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.

Edward W. Wiesner
R. W. Blake
Charles E. Goodlin
T. E. Losey
James B. Zink