

Award No. 4819

Docket No. 4790

2-MP-EW-'66

NATIONAL RAILROAD ADJUSTMENT BOARD**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered.

PARTIES TO DISPUTE:**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'****DEPARTMENT, A.F. OF L. - C. I. O. (Electrical Workers)****MISSOURI PACIFIC RAILROAD COMPANY****DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Missouri Pacific Railroad Company violated Rules 25, 26, 107 of the controlling agreement and Sections 6 and 10 of the Vacation Agreement when they assigned Supervisor A. Highfill to perform telephone maintainers' work on August 12, 13, 14 and 15th, 1963, Kansas City, Missouri.
2. That accordingly, the Missouri Pacific Railroad Company compensate the following telephone maintainers in the amount of two hours, forty minutes (2'40") at the punitive rate as follows:

J. J. Hoffman	2 hrs. 40 min. @ punitive rate—	August 12, 1963
F. H. Lindsey	" " " "	August 13, 1963
R. D. Babylon	" " " "	August 14, 1963
W. E. Hamilton	" " " "	August 15, 1963

as they were available and should have been called to perform this work.

EMPLOYEES STATEMENT OF FACTS: The Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintains a regular force of telephone maintainers headquartered in Kansas City, Missouri who work from that point maintaining communications equipment which includes the Omaha Division. Telephone Maintainers J. J. Hoffman, F. H. Lindsey, R. D. Babylon and W. E. Hamilton, hereinafter referred to as the claimants, are employed by the carrier at Kansas City and hold contract to perform said work.

On August 12, 1963, Communications Supervisor A. Highfill took equipment including telephone batteries, receivers, transmitters, etc. from the communications shop in Kansas City, telling the telephone maintainer he was going on the Omaha Division to repair some equipment (the distance between Kansas City and Atchison, Kansas is approximately one (1) hour's travel time).

At approximately 9:30 A.M. Supervisor Highfill called the Kansas City dispatcher to ring Atchison telegraph office and the dispatcher was advised it did not ring. Mr. Highfill said the selector would have to be taken out of the case for repairs and that

Although your board's denial of the claim in Award 4086 on this property governing the same parties under the same circumstances must be controlling in this case, we point out the award follows the principles announced by your board in such awards as 3967 and 4112 which held that your board is not authorized by the Railway Labor Act to impose a penalty on the carrier nor is a penalty provided for in the agreement between the parties. Claimants suffered no financial loss and any monetary claim on their behalf is in the nature of a penalty. It follows that the monetary claim must be denied in any event.

For all of the foregoing reasons, the carrier has not violated Rule 26(a) of the Shop Craft Agreement nor Articles 6 and 10(b) of the vacation agreement as alleged. The claim must be denied on its merits. We have also pointed out that your board has no authority to impose the penalty on the carrier requested in the second part of the employes' claim and that the monetary claim must be denied in any event.

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 approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This controversy arises out of a claim by employes that a telephone maintainer was on vacation and the Carrier did not provide a relief telephone maintainer as required in the Vacation Agreement; further, that Carrier had work belonging exclusively under the effective Agreement performed by a Supervisor in violation of Rule 107(a) of the Agreement. Carrier denied that there was any violation of the Vacation Agreement and also contends that the Supervisor did not do any work belonging to telephone maintainers.

There is nothing in this record which would justify this Board in finding that there has been a violation of the Vacation Agreement.

In support of that portion of the Claim which urges that the Supervisor was performing telephone maintainers' work, the employes rely on Rule 107(a) which contains the Classification of Work. However the Agreement contains Rule 26(a) in which it is stated that foremen are not prohibited from performing work in the exercise of their duties.

Without reviewing the alleged facts asserted in this record, suffice it to say they are very similar to those appearing in Award No. 4086, wherein the same parties are involved, at the same station, Kansas City, Missouri, and the issues are identical. The following conclusion was reached—"In this state of the record this Board is in no position to find that these items of work were not performed in the exercise of the supervisor's duties."

This Board concurs in the conclusion reached in that Award and the reasoning on which it was based and will follow the same here.

A W A R D

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**Attest: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 9th day of March, 1966.