

Award No. 5436
 Docket No. 5303
 2-MP-EW-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
 DEPARTMENT, AFL-CIO (Electrical Workers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the controlling agreement on Friday, November 26, 1965 when they required Telephone Maintainer W. L. Schumacher to take company truck and drive Western Union Lineman from Popular Bluff, Missouri, to M.P. 130-12, November 26, 1965 at 6:30 P. M. and returned at 1:30 A. M. November 27, 1965, which was no emergency as the dispatcher had a usable line and denied him compensation in the amount of seven (7) hours for this date, Friday, November 26, 1965.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Telephone Maintainer W. L. Schumacher in the amount of seven (7) hours at the pro rata rate for Friday, November 26, 1965, as provided in the controlling agreement.

EMPLOYEES' STATEMENT OF FACTS: Mr. Schumacher, hereinafter referred to as the Claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, as Telephone Maintainer at Popular Bluff, Missouri, and is compensated in line with rule 107(c) reading in pertinent part:

“(c) (Western and Southern District only.) Telephone maintainers will be paid a monthly rate to cover all services rendered except as hereinafter provided. They will be assigned one regular rest day per week, Sunday if possible. Rule applicable to the classification of electrician shall apply to service for monthly rate telephone maintainers on their assigned rest day. **Ordinary maintenance or construction work not heretofore required on Sunday will not be required on the sixth day of the work week. . . .**”

On Friday, November 26, 1965, Telephone Maintainer Schumacher was called to transport Western Union Lineman to MP 130-12 account of tree in

follows that claimant was properly compensated by the allowance of his monthly rate and that he is not entitled to the additional compensation claimed. It follows that the claim must be denied.

All matters contained herein have been the subject matter of correspondence and/or conference.

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.

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

On November 26, 1965, Friday, Communication lines were struck by a tree during a storm, between St. Louis and Poplar Bluff. In addition to the Carrier's communication circuits, Western Union lines and the lines of the Magnolia Pipe Line Company were fouled. The carrier lost communications over the dispatcher's circuit, the message circuit, the through telephone circuit and two additional wires used to transmit teletype messages.

The claimant drove the carrier's truck with the Western Union and Pipe Line Company linemen to the site of the trouble. The problem was resolved and communications were reestablished. It was the contention of the claimant that his orders were, "Take linemen to wire failure as rain prevented use of motor car MP 130-12." That he was required to do no work as the Western Union and Pipe Line men corrected the problem, removed the tree, and his sole function was to act as a chauffeur which was outside the scope of his employment Rule 107(c). Furthermore, there was no emergency as the "dispatcher had a usable line."

A review of the facts fails to reveal whether the telephone maintainer could have been used at the time the repair work was being accomplished. Was the situation resolved without difficulty and exercising hind sight he did not have to necessarily make the trip? The record does not explain these various situations that could arise. However, the record does state in the Carrier's Ex Parte submission, page 3 * * * "The Carrier also notified the claimant of the difficulty." This is not denied. Claimant, in line with his duties as a telephone maintainer, was expected to take whatever steps were necessary to restore the Carrier's communication lines. This is not denied. The Carrier's communication lines were disrupted. This is not denied. Under the circumstances, communications could have gotten worse. These statements express speculations which could have required the presence of the maintainer. If the Western Union and Pipe Line linemen were just to accompany the claimant, the Board is of the opinion the rule was not violated. Provided the message "Take linemen to wire failure as rain prevent use of Motor Car MP 130-12." was in the nature of permission for them to ride in the Carrier's truck rather than a directive to just transport them to the scene of the wire failure, then the directive would be a violation of Rule 107(c) as such duty is foreign to the scope of the employment. If this message was sent based on the presumption

that the Claimant was going to the scene of the wire failure with or without passengers then Rule 107(c) has not been violated. From the record it is difficult to determine whether an emergency existed.

Thus, on the record and on incomplete presentation of all the facts from the property we deny the claim.

AWARD

Claim denied.

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

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1968.