

Award No. 5532

Docket No. 5357

2-MP-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Missouri Pacific Railroad Company violated the controlling agreement when Carman T. P. Bradley was called for overtime in the train yards, North Little Rock, Arkansas, on February 10, 1966 and when he reported was not permitted to work the assignment.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to additionally compensate Carman T. P. Bradley in the amount of eight (8) hours at the punitive rate account being deprived of working the 11:00 P. M. shift February 10, 1966.

EMPLOYEES' STATEMENT OF FACTS: Mr. T. P. Bradley, hereinafter referred to as the Claimant, is employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, as car inspector on Job F in the Train Yards, North Little Rock, Arkansas, hours 3:00 P. M. to 11:00 P. M., work week Saturday through Wednesday, rest days Thursday and Friday.

On Wednesday, February 9, 1966, the Claimant laid off account personal business, following which Thursday and Friday, February 10th and 11th, were his rest days. However, Claimant's name next appeared for overtime and on Thursday, February 10th, Car Foreman F. B. Jones called the Claimant to work overtime on the 11:00 P. M. to 7:00 A. M. shift. The Claimant reported for work at 11:00 P. M., February 10, 1966, in line with instructions, but because he had laid off on Wednesday, February 9, 1966, he was not permitted to work the assignment and was sent home by the foreman.

Because the Claimant laid off account personal business on Wednesday, February 9, 1966, did not alter his right to work overtime when called, as in the instant case. Also, the Employees wish to point out that in declining this case, Shop Superintendent, Mr. A. J. Daniel, refers to the Claimant being off February 9, 1966, "account illness." This statement is untrue and was later corrected by the Carrier through correspondence.

suffered no loss of earnings. Your Board has held many times that a monetary claim must be denied where no loss of earnings is shown. For example, in Award 4112 on this property involving the same Organization, the monetary claim was denied because the claimant suffered no loss of earnings. There your Board held:

“However, claimant Trainor was fully employed on regular assignment at his own home point at the same pay, and suffered no pecuniary loss.”

and denied the claim. The claimant in this case was not entitled to be called for the overtime but, in any event, he remained at the top of the overtime board. He was called in his turn for overtime and suffered no pecuniary loss. The Employees have made no effort to show a pecuniary loss, only the fact that he was not permitted to work overtime while laying off sick from his regular assignment.

Although the entire claim must be denied for the reasons stated, we also point out that the monetary claim is a claim for the time and one-half rate for work not performed. Your Board has uniformly denied such monetary claims. See, for example, Award 2958.

For the reasons fully stated above, the method of regulating the rotary overtime board at North Little Rock distributes the overtime equally as required by Rule 8 (b). The record shows that claimant was included on the overtime board and that he was called for overtime work for which he was eligible under the rules and practice at North Little Rock. There is no basis for the claim for eight hours at the time and one-half rate for work not performed. The claim should be denied.

(Exhibits not reproduced.)

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 of hearing thereon.

Claimant was called for overtime service at Carrier's train yard in North Little Rock, Arkansas on February 10, 1966, but was denied an opportunity to perform such work because he had laid off the previous day and had not reported back for duty on his regular assignment prior to reporting for said overtime assignment. Claimant seeks eight (8) hours compensation at the punitive rate for being deprived of the overtime assignment in violation of the controlling agreement between the parties.

Carrier contends that Claimant laid off on the day prior to the date of claim because of illness and that Car Inspectors at North Little Rock are required to report back to their regular positions after laying off on account of illness before they are eligible to accept service on an overtime basis.

Petitioner contends that no provision in the controlling Agreement requires an employe to report back to his regular position following a day off for personal reasons as a condition precedent to accepting a call for an overtime assignment. Furthermore, Petitioner avers that Claimant was laid off because of personal business and not illness on February 9, 1966.

Rule 8 (b) of the controlling Agreement merely provides as follows:

“(b) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally. Local Chairman will, upon request, be furnished with record.”

The record reveals that overtime for car inspectors at North Little Rock is distributed through a rotary overtime board, but the parties are in fundamental disagreement both as to the exact nature of claimant's lay off on the date immediately preceding the disputed overtime assignment and past practice with respect to availability of employes for overtime assignments before reporting back to their regular positions from layoffs. This Board is neither qualified nor has the authority to resolve such disputed questions of fact, which are essential to a proper interpretation of Rule 8 of the applicable Agreement.

Despite the conflicting evidence concerning availability for overtime assignments, the record clearly discloses that Claimant responded to Carrier's call on February 10, 1966. Rule 4 (c) of the controlling Agreement unequivocally provides that “Employes called or required to report for work and reporting but not used will be paid a minimum of four (4) hours at straight time rates.” Accordingly, Claimant is entitled to four (4) hours compensation at the straight time rate and the claim will be sustained as modified herein.

AWARD

Claim is sustained as modified in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1968.