

Award No. 157

Docket No. 151

2-MP-MA-'37

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: Shall Machinists T. H. Bledsoe and A. D. Wait, and Machinist Helpers John Bawiec and P. A. Cline, who were assigned by bulletin to work five (5) days per week, be compensated on punitive basis for work performed beyond their regular bulletined hours on Saturday, July 11, 1936?

STATEMENT OF FACTS: At 11:30 A. M. on July 7, 1936, a five thousand cubic foot air compressor located in the power house broke a cross-head gib. This date was on a Tuesday. Immediately after the occurrence mechanics were assigned to strip the damaged machine and the repair work was continued until the machine was again placed in operation on the morning of July 13.

The claim here is on behalf of Machinists Bledsoe and Wait and Machinist Helpers Bawiec and Cline who were regularly assigned by bulletin at this place for five days per week. These men were required to work on Saturday, July 11, which was not their regular working day, and were compensated on a straight time basis instead of on an overtime basis.

POSITION OF EMPLOYES: Employees contend that these men should be compensated on an overtime or punitive basis for work done on Saturday as it was work done outside of regularly bulletined hours and therefore within the terms of Rule 3 (a) which reads as follows:

"All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out."

POSITION OF CARRIER: The refusal of the carrier to pay the overtime rate is based upon Note 3, of Rule 21 (a), which reads as follows:

"If it is found necessary to close back shops at Little Rock, St. Louis, Sedalia, Kansas City, DeSoto or Hoisington for a certain number of days during the month this is permissible by serving as much advance notice as possible. During such temporary shut-down sufficient number of men may be retained to take care of emergency work, such emergency force to work regular bulletined hours, the intent being to retain as many men as possible on forty (40) hour basis rather than working a limited number forty-eight (48) hours per week."

The contention is that this is emergency work within the meaning of the latter quoted Note 3.

OPINION OF BOARD: In our opinion the work here involved was emergency work within the meaning of the rules quoted by the carrier. Rule 21 (a), and the Interpretation of Note 3 was agreed upon by representatives of the employees and of the carrier. They clearly cover the situation involved herein. Therefore, we can reach no conclusion but that the men here involved are entitled to pay only on a straight time basis. The interpretation referred to reads as follows:

"INTERPRETATION: It is understood and agreed that during temporary shut-downs of the back shops specified; on Saturdays when the shops are working on a five day per week schedule, as well as during any other calendar days of the month, excluding Sundays and holidays, men retained or called to take care of emergency work and who work the regular bulletined hours of assignment for a day's work in the shops, such force so employed on Saturdays and other days of the week and/or month, excluding Sundays and holidays, shall be compensated for services performed on pro-rata basis, or on the same basis as they are paid for services performed for regular work period."

It is not reasonable to argue that the breakdown of the air compressor in the power house did not create an emergency. If the situation caused by the breakdown of such important machinery as an air compressor is not an emergency, it is hard to conceive of any type of occurrence that would be an emergency within the meaning of the rules hereinbefore quoted. An "emergency" is defined as a "sudden condition calling for immediate action." It cannot be soundly argued that the situation which arose herein was not within this definition. Moreover, there is no definition of "emergency" which would not include within it a situation such as the one here concerned. If the parties intended by the use of the word "emergency" something which the word itself does not connote, this Division had no way of ascertaining such fact. We can only interpret the rules and agreements as they are made. In doing so we must look to the common ordinary meaning of the words used. We cannot ascertain hidden and secret meanings which are not expressed and which cannot be proved. A reasonable construction allows only the conclusion that the breakdown in machinery was an emergency within the meaning of the rules hereinbefore quoted.

Moreover, it is clear that the interpretation agreed upon between the employees and the carrier clearly gives to the employees only the right to pay on a straight time basis under the circumstances such as are involved herein. It is clearly stated in the interpretation that during temporary shut-downs of back shops on Saturdays men retained or called to take care of emergency work and who are employed on Saturdays are to be compensated only on a straight time basis. The men involved in this case are clearly within this provision. They were called for the purpose of doing the repair work necessary because of the breakdown of the air compressor.

Our conclusion is, therefore, that the employees have bargained away any rights they may have had for payment on a punitive basis for overtime work where an emergency occurs, such as has occurred in this case.

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 employees 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.
The claim of the employees herein should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1937.