

Award No. 196

Docket No. 197

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 EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist S. E. Kleinhein and Helper R. L. Wilhoit, be compensated at punitive rate for 3½ hours for service performed on wrecker X-109 on Sunday, July 5, 1936.

EMPLOYEES' STATEMENT OF FACTS: Machinist S. E. Kleinhein and Helper R. L. Wilhoit are regular assigned seven-day running repair employes at Osawatomie, Kansas. On Sunday, July 5, these employes were requested to make repairs to wrecker X-109.

POSITION OF EMPLOYEES: We contend that any work performed by Machinist S. E. Kleinhein and Helper Wilhoit on wrecker X-109 on Sunday, July 5, 1936, was in violation of the provisions of Rule 3 (b):

"Work performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday the day observed by the State, Nation or Proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half, except that employes necessary to the operation of power houses, millwright gangs, heat-treating plants, train yards, running-repair and inspection forces, who are regularly assigned by bulletin to work on Sundays and holidays and men called to fill their places on such regular assignment, will be compensated on the same basis as on week days. **Sunday and holiday work will be required only when essential to the continuous operation of the railroad.**"

It is our contention that work performed on Derrick X-109 could not under provisions of Rule 3 (b) be considered as running repairs and inspection, or essential to continuous operation of the railroad.

CARRIER' STATEMENT OF FACTS: Wrecker X-109 was used on Sunday, July 5, 1936, picking up MP car 6508, which was broken in two in the Osawatomie yard. While so engaged in this work, the eccentric blade bent and threw the machine off center on wrecker X-109, thus disabling the machine.

Necessary repairs to place wrecker in serviceable condition were promptly performed by S. E. Kleinhein, machinist, and R. L. Wilhoit, machinist helper,

time consumed 3½ hours. Both of these men were on duty—assigned under Rule 3 (b) of wage agreement with the shop crafts dated July 1, 1936, reading in part:

“ . . . employes necessary to the operation of power houses, millwright gangs, heat-treating plants, train yards, running-repair and inspection forces, who are regularly assigned by bulletin to work on Sundays and holidays and men called to fill their places on such regular assignment, will be compensated on the same basis as on week days. . . .”

The repairs to the wrecker are considered “running-repair” work.

POSITION OF CARRIER: Wrecking machines are placed at advantageous terminal points, and they of necessity must at all times be ready for service. In this particular case there is no question but that the machine was broken in service, required immediate repairs, and that the two men assigned to repair it were on duty at the time. They were not called to work on this machine, but were on duty under an assignment as provided for in our wage agreement rules with the employes (see Rule 3 (b) quoted in Carrier's Statement of Facts).

Our contention in this case is: Kleinhein and Wilhoit were on duty as a machinist and helper respectively, properly assigned under the rules of our wage agreement; they were engaged on running repairs as contemplated by the rule, and there is no rule nor practice under our wage agreement that would sustain the employes' demand that they should be paid for 3½ hours of their 8 hours' service performed on that day at punitive overtime rate while working on this wrecking machine.

OPINION OF THE DIVISION: The questions for decision by this Division concern Rule 3 (b) and whether under the terms of that rule, the repair made in this case by the two machinists was a “running-repair,” and thus came within one of the accepted categories; also whether, if a “running-repair,” it was “essential to the continuous operation of the railroad.”

The wrecker here in question is a vehicle mounted on railroad trucks moved by train from place to place on the line of the railroad for necessary emergency work. In train movements it is necessarily connected in the train line in the usual manner. That such a wrecker is “essential to the continuous operation of the railroad” is so clearly demonstrated by a simple statement of the facts that elaboration seems unnecessary.

The repair here made was the straightening out of an eccentric blade, without which repair the wrecker could not be efficiently operated. It was a minor repair that occupied but a portion of the day of service. Such a repair to a necessary vehicle that might at any moment be placed in a train to be moved over the rails of the carrier to the point of a wreck, cannot be other than a “running-repair.” A refinement of reasoning that would conclude the repair of a wrecker not a “running-repair,” while the repair of cars or locomotives is admittedly so, cannot be sustained. We hold that the repair to the wrecker was a “running-repair” within the accepted category of Rule 3 (b). We have no alternative but to deny the claims of the employes for the application of the overtime rate for this work.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carrier 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.

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The carrier has not violated its agreement with System Federation No. 2 in paying the straight time rate to Machinist S. E. Kleinhein and Helper R. L. Wilhoit on Sunday, July 5, 1936.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of December, 1937.