

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 8, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
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(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. As per the following schedule, the Missouri-Kansas-Texas Railroad Company failed to properly compensate monthly rated Division Linemen R. G. Minor, J. E. Forbes and J. H. Griffith for work performed in excess of eight (8) hours per day:

<u>Claimant</u>	<u>Day</u>	<u>Date</u>	<u>Excess Hours</u>
R. G. Minor	Tuesday	10-7-75	2
R. G. Minor	Wednesday	10-8-75	2
R. G. Minor	Thursday	10-9-75	2
R. G. Minor	Friday	10-10-75	1
J. E. Forbes	Tuesday	10-7-75	2
J. E. Forbes	Wednesday	10-8-75	2
J. E. Forbes	Thursday	10-9-75	2
J. E. Forbes	Friday	10-10-75	1
J. H. Griffith	Monday	10-6-75	1
J. H. Griffith	Tuesday	10-7-75	2
J. H. Griffith	Wednesday	10-8-75	2
J. H. Griffith	Thursday	10-9-75	2
J. H. Griffith	Friday	10-10-75	1
J. H. Griffith	Monday	10-13-75	1
J. H. Griffith	Tuesday	10-14-75	2
J. H. Griffith	Wednesday	10-15-75	2

2. For these violations, the Missouri-Kansas-Texas Railroad Company be ordered to compensate Linemen R. G. Minor, J. E. Forbes and J. H. Griffith, respectively, for the excess hours worked at the time and one-half rate of pay.

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.

Claimants are monthly rated Division Linemen. As stated in the claim, these employees worked beyond eight hours for one or two hours a day on various dates between October 7, 1975 and October 15, 1975. The work involved the clearing of brush in connection with the Carrier's necessary rehabilitation and reconstruction work on the right of way between Temple and Taylor, Texas, in anticipation of initial Amtrak operation over that portion of track on October 26, 1975.

The applicable portion of the collective bargaining agreement between the parties, quoted and referred to at length during the processing of the claim is Article V, which reads in part:

"MONTHLY RATED EMPLOYEES

(a) Division Linemen, Equipment Installers, and Telephone and Telegraph Shop Mechanics, will be paid on a monthly basis. These employees will be subject to call for work at any time, but will not be required to work on sixth day or holidays, or more than eight (8) hours in any twenty-four (24) hour period, except in an emergency.

These employees will be paid their regular monthly rate to cover all time, whether working, waiting, or traveling except work performed on their assigned rest day. Such employees shall be assigned one regular rest day per week, Sunday if possible.

Rules applicable to other employees of the same craft or class shall apply to service on such assigned rest day."

The basic employee position can be summarized as follows:

(1) Claim of failure of the Carrier to "properly compensate" for work performed in excess of eight hours per day.

(2) Claim for such pay at the rate of time and one-half.

The Agreement makes clear that monthly rated employees receive their "regular monthly rate to cover all time, whether working, waiting or traveling except work performed on their assigned rest day" (Sunday, which is not involved here). There is a further restriction, however; namely, these employees, while "subject to call for work at any time", "will not be required to work on sixth day or holidays, or more than eight (8) hours in any twenty-four (24) hour period, except in an emergency".

Thus, the rule is crystal clear that no additional compensation is due if employes are directed to work more than eight hours per day in an emergency (and the monthly overall specified total of hours is not exceeded).

Was the clearing of brush by Division Linemen against an early deadline for Amtrak operation an emergency? The Carrier claims it was, indicating that all available personnel were pressed into service to complete the Carrier's work on schedule. The Organization claims that there was no emergency, in that the portion of the work assigned to the Division Linemen was completed well in advance of the deadline.

The Board finds that the Carrier exercised rational judgment in determining that an "emergency" existed and that it could therefore turn to its Division Linemen, and others, to "pitch in".

The word "emergency" is not further defined in the Agreement. In the absence of such definition, many previous awards have provided some specific meaning. For the Board's purpose here, the definition found in the American Heritage Dictionary of the English Language is sufficient: "A situation or occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action." Clearing brush (in itself) may not be of a serious nature, but in the context of the entire operation, the Board finds no fault with the Carrier's definition of an emergency, given the important deadline it was required to meet.

Under this conclusion, it is apparent that no additional pay is due to the Claimants, since the Agreement makes them available -- within their regular monthly rate -- beyond eight hours a day "in an emergency".

Since the Board finds that the work in question was of an emergency nature, there is no necessity to comment on work beyond eight hours a day in a non-emergency situation.

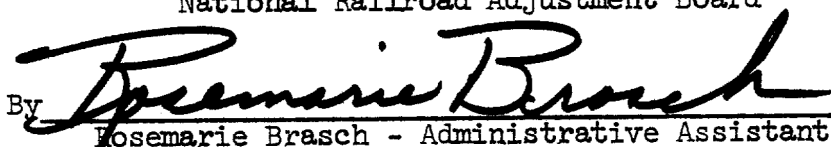
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of December, 1977.

