Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8905
Docket No. 8936
2-MC-EW-'82

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Maine Central Railroad Company

Dispute: Claim of Employes:

1. That the Maine Central Railroad Company violated the current Agreement by failing to compensate Electrician Paul P. Vance at the double time rate for his service rendered during the entire eight (8) hours on Sunday, February 25, 1979.

2. That accordingly, the Maine Central Railroad Company be ordered to compensate Electrician Paul P. Vance the difference between pay received at the pro-rata rate and what he should have received at the double time rate ($36.02).

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.

The Claimant's normal working assignment is from 7:00 a.m. to 3:00 p.m., Monday through Friday, with Saturdays and Sundays as rest days. The Claimant's point of employment is Bangor, Maine. On Sunday, February 25, 1979, the Claimant was called to do road repairs on Engine 261 at Costigan and reported at 12:15 a.m. Upon his return to Bangor at 7:00 a.m., February 25, he was again called to go to Calais to perform road repairs on Engine 581 and he subsequently returned to Bangor at 3:30 p.m.

The claim essentially contends that for the second call (the one to Calais) the Claimant should be paid double time. The dispute involves the interpretation and application of the following portion of the December 4, 1969 National Agreement which states in pertinent part:

> "All agreements, rules, interpretations and practices, however established, are amended to provide that service performed by a regular assigned hourly or daily rated employee on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours

of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions thereof."

The critical issue in this case is whether wither period of overtime worked by the Claimant was "emergency work paid for under the call rules". If it is found that it was emergency work, the claim clearly must be denied. The pertinent contract provision is clear that any service performed in connection with emergency work will not count as qualifying the employee for double time on second rest day.

The Carrier claims that double time should not be paid for the period of 7:00 a.m. to 3:30 p.m. because in both instances the work was emergency in nature and therefore does not qualify under the rule for double time pay. The work in question, it is asserted, was in fact emergency work performed under Rule 7 which reads as follows:

"Rule 7 - PAY FOR WRECKING OR EMERGENCY ROAD SERVICE

(a) Employes regularly assigned work at shop, engine house, repair track or inspection point, when called for emergency road work away from such shop, engine house, repair track or inspection point, will be paid from the time ordered to leave home station until return, for all service (subject to the exceptions which follow) in accordance with the practice at home station."

The Carrier, in support of this assertion, made the following statement in their submission as to the nature of the emergency work performed by the Claimant:

"All work performed by Claimant was on disabled locomotives on trains stalled en route, tying up the main line, which is clearly 'emergency road work' under Rule 7 quoted above."

The Organization argues that the employee was not performing emergency work. It is their contention that the work performed by the Claimant was work regularly performed by him at the locations in question. They contend that the Carrier has failed to present any evidence that an emergency existed. In connection with the Carrier's statement that the work was done in connection with stalled locomotives en route, the Organization entered an objection in the record that such a statement was new evidence never before presented on the property.

In reviewing the record, we find there is sufficient evidence to conclude that the work performed by the Claimant on his first rest day was emergency road work and therefore does not count toward qualifying for double time for the work he performed on his second rest day. In connection with the Organization's objection about new evidence, the Board agrees that the precise wording of the statement made by the Carrier in their submission regarding the nature of the emergency cannot be found in the record. However, after a thorough reading of the correspondence, it can be conclusively inferred from the Carrier's statements that they did assert on the property that an emergency did in fact exist. The

evidence as to whether there was an emergency is much more than a mere assertion as suggested by the Organization. Further the term "emergency" should be given a more broad meaning than is suggested by the Organization. We do not agree with the Organization that Rule 8 limits the meaning of the term "emergency" with the examples therein used and we find that the term "emergency" should be given its ordinary meaning. Moreover, the correspondence makes it clear that both locomotives were experiencing problems on the line of road which required immediate attention. The work performed was not routine as suggested by the Organization. Clearly the situation falls within the normal definition of the word "emergency" as adopted by this Board in previous cases. Further, work performed by the Claimant was clearly "road work" and this also strongly suggests that it is covered by Rule 7 and thus exempt from double time pay provisions.

In summary, it is the finding of the Board that the claim must be denied because the work performed on the first rest day was emergency work paid under Rule 7 which, by the express provisions of the December 4, 1969 Agreement, exempts the Carrier from paying double time on the second rest day.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of February, 1982.