

Award No. 159

Docket No. 160

2-MP-MA-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Machinist S. E. Kleinhein and Helper L. R. Wilhoit be compensated at punitive rate for 7 hours and 20 minutes service performed on bridge derrick X-247 date of Sunday, May 24, 1936, Osawatomie, Kansas.

EMPLOYEES' STATEMENT OF FACTS: Machinist S. E. Kleinhein and Helper L. R. Wilhoit are regular assigned seven-day employes at Osawatomie, Kansas. On Sunday, May 24, 1936, these men were assigned to make repairs to bridge derrick X-247; they worked on this derrick 7 hours and 20 minutes, being compensated on pro rata basis.

CARRIER'S STATEMENT OF FACTS: Derrick car No. X-247 was placed in the Osawatomie shops for running repairs on May 14, 1936, work completed and turned out of the shops on May 22, 1936. On Saturday afternoon, May 23, 1936, foreman, construction department, reported that the gears on the machine were meshed too tight; machine was brought back to the shops for necessary adjustments; and, as the construction department was in need of the machine to commence work on the bridge near Paola, Kansas, at 8:00 A. M., Monday morning, May 25, 1936, the running repairs necessary to the equipment were performed by the regular assigned running repair force on Sunday, May 24, 1936. The necessary work was to melt babbitt out of boxes and reline shaft.

POSITION OF EMPLOYES: We contend that any work performed by Machinist S. E. Kleinhein and Helper L. R. Wilhoit on bridge derrick X-247 on Sunday, May 24, 1936, could not, under Rule 3 (b), reading:

"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."

be construed as running repairs or necessary to the continuous operation of the railroad.

Evidence procured and as admitted in Mr. Clements' letter of September 8, 1936, revealed that though this machine had been at Osawatomie shops 10 or 12 days previous to Sunday, May 24, no work had been performed on this machine May 22 or 23 (Friday and Saturday immediately prior to Sunday, May 24). We contend this class of work could not under Rule 3 (b) be considered or construed as running repairs and that Machinist Kleinhein and Helper Wilhoit should be compensated in line with claim.

POSITION OF CARRIER: Claimants are regularly assigned by bulletin to work on Sundays and holidays, being a part of the "running repair and inspection forces" under Rule 3 (b) of wage agreement. The work they performed was classified as running repairs, and they were properly paid for the services performed at the pro rata rate as provided for in the rules.

Following is distribution of time of the claimants working on machine No. X-247, which was taken from their work report cards:

May 14	— 8	hours each	working on	machine	X-247
" 15	— 8	" "	" "	" "	" "
" 16	— 8	" "	" "	" "	" "
" 18	— 6½	" "	" "	" "	" "
" 19	— 8	" "	" "	" "	" "
" 20	— 8	" "	" "	" "	" "
" 21	— 8	" "	" "	" "	" "
" 22	— 4	" "	" "	" "	" "
" 24	— 7 1/3	hours each			

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.

The parties to said dispute were given due notice of hearing thereon.

The evidence of record shows derrick car X-247 was worked on by the claimants May 14 to May 22, inclusive, and again worked on Sunday, May 24.

Rule 3 (b) of agreement reads in part:

"Sunday and holiday work will be required only when essential to the continuous operation of the railroad."

No showing was made by the carrier's representative that the work performed on machine X-247 Sunday, May 24, was essential to the continuous operation of the railroad.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1937.