**Award No. 192**
**Docket No. 180**
**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.**

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## PARTIES TO DISPUTE:

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

## MISSOURI PACIFIC RAILROAD COMPANY

DISUTE: CLAIM OF EMPLOYES: That Machinist E. H. Turner, R. R. Counts, J. L. Fahrion and N. B. McArthur be compensated at punitive rate for time worked Saturday, February 6, 1937.

STATEMENT OF FACTS: Four employes who are regularly assigned to work 40 hours per week were worked 8 hours on Saturday making repairs on a Gantry crane, a machine used in the supply department. They were compensated on a pro rata basis.

POSITION OF EMPLOYES: Machinist Turner, Counts, Fahrion and McArthur are regularly assigned by bulletin at Little Rock to work 40 hours per week, consequently time worked Saturday, Feb. 6, 1937, was 8 hours or one full day in excess of regular bulletined hours as in force at Little Rock shops, being compensated at pro rata rate. It is our contention that in compliance with Rule 3 (a):

> "Rule 3. (a) 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."

these employes should be compensated at punitive rate for work performed Saturday, February 6, 1937.

The management declines claim, basing decision on interpretation of Rule 21, Note 3:

> "Note 3: If it is found necessary to close backshops 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-downs 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."

It is our contention that there was no shut-down or curtailment of work, due to defective crane at Little Rock shops. We further contend that shops

were operated for many years without the aid of Gantry cranes, consequently this machine could not be considered as necessary to the operation of the railroad or the shops.

We also contend that Rule 24 of agreement:

> "Employes required to work when shops are closed down, due to breakdown in machinery, floods, fires and the like, will receive straight time for regular hours, and overtime for overtime hours."

clearly defines the intent and application of emergency relative to shop machinery; therefore, Rule 21, Note 3, herein cited by management, has no bearing on this case, employes' Exhibit A.

**POSITION OF CARRIER:** The wage agreement with the shop employes provides in Rule 21, Note 3:

> "If it is found necessary to close backshops 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-downs 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."

to which the following mutually agreed upon interpretation applies:

> "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 a pro rata basis, or on the same basis as they are paid for services performed for regular work period."

This was emergency work and the claimants were properly compensated for the services they performed on this job on Saturday, February 6, 1937, and in strict accord with the agreed upon interpretation of Rule 21, Note 3, quoted above.

**OPINION OF THE DIVISION:** The dispute here involves the question of payment of the punitive rate for work performed on Saturday, February 6, 1937, under the provisions of Rules 3 (a) and 24, while the shops at Little Rock were closed down.

It is agreed by both sides that the determination of this question depends upon whether or not the work performed on the Gantry crane was in the nature of emergency work.

In our opinion, the evidence presented by the carrier does not sustain its position that an emergency existed under the provisions of Rule 21, Note 3, and the interpretations thereof. An emergency is commonly understood to be an unforeseen condition or circumstance calling for sudden and immediate action.

Dictionary definitions are consistently to this effect. We cannot reasonably hold that the agreement between the carrier and the employes contemplates any other than the usually accepted meaning of the term "emergency."

The record falls far short of establishing a situation in the nature of an emergency at the Little Rock shops. On the contrary, the work done was

repair work not caused nor occasioned by any breakdown. It was more in the nature of an overhauling. Moreover, it is conceded that there was no necessity for a shut-down of the shops.

We are not influenced by the argument made by the carrier directed toward a more desirable interpretation of the rules. The rules have been made, the language thereof is clear, and the term "emergency" is one not susceptible to many varied interpretations. There being no emergency within the common and generally understood meaning of that term, we have no choice but to apply the rules, and, therefore, the action of the carrier cannot be upheld as authorized under the present agreement.

The claim of the employes must be sustained.

**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 carrier violated its agreement with System Federation No. 2 in not paying the punitive rate of time and one-half to the employes who were required to do repair work on the Gantry crane on Saturday, February 6, 1937.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1937.