

**Award No. 193**

**Docket No. 189**

**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 M. Wright be compensated in amount equal to four hours at his regular rate of 81 cents per hour—total amount involved \$3.24.

**EMPLOYEES' STATEMENT OF FACTS:** On January 24, 1937, Machinist W. J. Fenoughty, regular assigned running repair machinist, was assigned to plane guard rail which was to be used in track at Paola, Kansas. Mr. Fenoughty started job at 11:15 A. M., and completed same at 2:30 P. M., January 24. This rail was not removed from shop until 8:30 A. M., January 25, 1937.

**POSITION OF EMPLOYEES:** The employes ask for compensation for Machinist M. Wright equal to four hours as he was the machinist entitled to call for overtime and the rules provide for four hours pay minimum (this job took only a little over two hours).

They contend that Machinist Fenoughty is regular assigned seven day running repair machinist and in compliance with Rule 3 (b), reading as follows:

“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 assignments, 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.”

is required to perform only such work on Sundays and holidays as set forth in this rule.

They claim that the work was not regular work within Rule 3 (b) and, therefore, should have been done on overtime in which case Fenoughty could not do it as he was regularly assigned.

**POSITION OF CARRIER:** January, 1937, our shop force of employes in the machinist craft, numbered:

2 lead machinists  
 1 machinist welder  
 2 machinist inspectors  
 30 machinists, class A  
 5 machinists, class B  
 7 machinist apprentices  
 27 machinist helpers

—  
 Total . . . 74

of which 61 were regularly assigned by bulletin to work on Sundays and holidays under Rule 3 (b) of our current wage agreement (above quoted).

W. J. Fenoughty, class A machinist, seniority dating from July 31, 1928, was one of the 20 machinists regularly assigned under this rule to work on Sundays and holidays. His services were required, being essential to the continuous operation of the railroad. The employes in presenting this case to the carrier did not question the propriety of Mr. Fenoughty's assignment under Rule 3, but do contend that it was not proper for him to plane this guard rail during his regular tour of duty, and that the carrier should have called a machinist to perform this work and pay him for the service performed under the overtime rules of the schedule. The carrier's position is that Fenoughty was on duty as a machinist, properly assigned under the rules, and that the work performed by him in planing this guard rail was only incidental in a machinist day's work. In other words, Fenoughty was not assigned for the mere purpose of planing this guard rail, but he was properly assigned as a machinist to perform work essential to the continuous operation of the railroad, and during his regular tour of duty this particular job of planing a guard rail, which required but two hours, fifteen minutes of his eight hour assignment, was regular machinists' work.

There is no basis whatsoever under our schedule rules for a claim to be filed by a machinist because he was not called under the overtime rules of the schedule to perform a piece of work that was handled by a machinist while he was on duty under pay and assigned within the provisions of the schedule rules with the employes.

**OPINION OF THE DIVISION:** The only question is whether or not the carrier could, under the authority of Rule 3 (b), assign the work here in question to Machinist Fenoughty, because it was work "essential to the continuous operation of the railroad."

In our opinion, this work was neither emergency work nor work "essential to the continuous operation of the railroad."

The rail in question was not a "running rail." Rather, it was a guard rail and the break-down of a guard rail would not seriously hinder or interfere with the continuous operation of railroad cars. That this is true is further substantiated by the fact that although the work on the guard rail was completed at 2:30 P. M. on January 24, it was not removed from the shop until 8:30 A. M. on January 25. Moreover, it appears that necessity for repairs arose January 23.

In light of these facts, it cannot be successfully maintained by the carrier that this work was "essential" work within the meaning of Rule 3 (b), and, therefore, it was work to which Machinist Wright was entitled on overtime basis. Rule 3 (b) cannot be used as a means of circumventing the requirements of call and overtime rules.

Our decision herein is in accordance with the views of the United States Railroad Labor Board, in Decision No. 222, Docket 475.

This case is written with full knowledge of the facts contained in Docket 192 (Award 195). Reference should be had to the decision of this Board in that case so that there may be full understanding of the purport of this decision. Repetition of what has been stated in 192 is without point.

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.

That the carrier has violated its agreement with System Federation No. 2 by assigning Machinist Fenoughty to the work of planing the guard rail and not calling Machinist Wright, who is entitled to call for overtime.

**AWARD**

Claim 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.