Award No. 2460
Docket No. CL-2542

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

St. Clair Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that John H. Landis, David R. Coleman, John R. Stickney, Florence Schroeder, Peter Hawkins, Joseph Gruber and Kenneth L. Schwebach, Stock Clerks at Dale Street Store, St. Paul, Minnesota, shall be compensated for additional time worked on Saturday afternoon, May 2, 1942, at time and one-half rate for two (2) hours and forty (40) minutes.

JOINT STATEMENT OF FACTS: Prior to May 2, 1942, the positions of Stock Clerk in the Dale Street Store at St. Paul, Minnesota, were assigned to work from 7:50 A. M. to 4:50 P. M. with one hour off for lunch, Monday through Friday and 7:50 A. M. to 12:20 P. M. on Saturday.

On May 1, 1942, John H. Landis, David R. Coleman, John R. Stickney, Florence Schroeder, Peter Hawkins, Joseph Gruber and Kenneth L. Schwebach were informed to report for work at 7:30 A. M. on Saturday, May 2nd, which they did, and were relieved from duty at 3:00 P. M., being on duty a total of seven (7) hours and thirty (30) minutes.

The employes in question made a claim for the twenty (20) minutes at the rate of time and one-half for the time that they were required to work prior to the regular assigned starting time, which was 7:50 A. M. They also made claim for two (2) hours and forty (40) minutes overtime at the rate of time and one-half for the time that they remained on duty after the regular assigned Saturday closing time which was 12:20 P. M. They were compensated for the twenty (20) minutes that they were required to work prior to 7:50 A. M., but the Carrier declined payment for the two (2) hours and forty (40) minutes work after the regular closing time of 12:20 P. M., Saturday.

POSITION OF EMPLOYES: There is in effect an agreement bearing the effective date of October 1, 1925, in which the following Rules appear:

> "Rule 42—Saturday Afternoon Service. Where in a given office it has been the practice to let employes off for a part of the eight-hour day on certain days of the week, such practice shall not be rescinded and shall not be departed from except in cases of emergency."

It is the contention of the Employes that Rule 42 provides that where the practice has been established to let employes off for a part of the day on Saturdays that such practice shall be continued except in emergency cases.

It is the position of the Carrier that any additional payment for time worked Saturday afternoon cannot be justified under the rules. Rule 42 is obviously a restrictive rather than a punitive rule, since no specific penalty is provided and, as a matter of fact, no such penalty as is asked for by the Employes in this case is provided for in this or any other schedule of which the Carrier has knowledge, since such payment would constitute an allowance of 2½ times the pro rata rate, as payment at pro rata rate is allowed for full 8 hours on Saturday and request is for additional payment at time and one-half for the period in question.

However, the Carrier believes that the set of circumstances surrounding this particular case were such as to bring it squarely within the exception provided in the rule itself, which provides that: "such practice shall not be rescinded and shall not be departed from except in cases of emergency." (Underscoring ours.) In Award 2040 of your Board, covering a question arising under the same rule on the same Carrier, reached with the assistance of Referee Fansler, the following language appears in the opinion of the Board:

> "Webster defines emergency as 'a sudden occasion; pressing necessity; strait; crisis.' It implies the unusual rather than the usual; the extraordinary rather than the ordinary. Regular work regularly required every Saturday afternoon or three-fourths of all Saturday afternoons cannot be considered emergency work in any ordinary or proper sense of the word."

We believe the conditions in this case are definitely within the definition of "emergency" set up in Award 2040. It most certainly was a "pressing necessity," since the shipment and receipt of materials was suspended during such inventory taking. It was "unusual rather than usual; extraordinary rather than ordinary," as, in the first place, the taking of inventory only occurs once a year; secondly, the first of May falls on Friday, Saturday or Sunday only in three out of seven years; and finally, it is the first and, in all probability the last, time the flooring on the main floor has been or will be torn up for renewal during the time inventory is being taken.

Therefore, the Carrier feels that the Employes in this case have been properly compensated under existing rules and that no further payment is warranted and submits that your Board should so hold.

OPINION OF BOARD: This dispute grows out of claims for pay at the rate of time and a half for Saturday afternoon work, and involves Rule 42 reading:

> "Where in a given office it has been the practice to let employes off for a part of the eight-hour day on certain days of the week, such practice shall not be rescinded and shall not be departed from except in cases of emergency."

The first of the two issues we are called upon to resolve is whether the services claimants performed on Saturday afternoon in an office in which it had concededly been the practice to let them off during that time were the product of an emergency, in the sense in which that term is employed in the quoted rule.

During the time in question claimants were called upon to assist in taking inventory of the stock on hand at the close of business on April 30th of that year. This was not a part of their daily routine, but it was an annual practice of the business. Under the most favorable circumstances, it was a task of some proportions involving tedious work and a halt in both the receipt and shipment of stock. Three days, Friday, Saturday and Sunday, May 1st to 3rd inclusive were set aside for the purpose. In prospect, the particular inventory promised some unusual difficulties because of the increased amount of stock and of disorder and disruption in the plant occasioned by repair and reconstruction work then in progress. Point is made of the fact that regulations

obligatory upon the Carrier called for the inventory as of the close of business on Friday, April 30th, the last full working day of the week in question. According to the Carrier's view the difficulties inherent in the task plus the pressing necessity of incurring the shortest possible interruption of normal operations gave rise to an emergency. We do not share that view.

In the absence of some indication that the parties to a contract have employed a word in a different sense it will be assigned its common significance. In Award No. 2040 it was noted that the concept denominated an emergency is suggestive of "a sudden occasion; pressing necessity; strait; crisis," and in Award 2349 it was noted that as the term is here used it is suggestive not only of the unusual rather than the usual, the extraordinary rather than the ordinary but the unexpected and the unforeseen. In the last cited award it was aptly said, "It implies a critical situation requiring immediate relief by whatever means at hand." Rule 42 cannot be read in the light of the common and accepted usage of the term emergency without perceiving that the parties to the contract intended to except from its dominant provision only such Saturday afternoon work as extraordinary and unforeseen events might render imperative.

That the circumstances to which the Carrier points did not give rise to an imperative need for the performance of Saturday afternoon work is conclusively demonstrated by the fact that the succeeding annual inventory was taken under similar circumstances during the last three regular work days of April. The inference is impelled that this work was the product of executive plans which were not induced by an emergency.

The remaining issue deals with the claim of the employes for compensation at the rate of time and a half by way of penalty. It is the position of the Carrier that the normal compensation of the employes included pro rata pay for the Saturday afternoon hours in question, and that the contract makes no provision for a penalty for a violation of Rule 42.

These contentions were ruled against this carrier in Award 2040. That award has been cited with approval in dealing with similar issues. See Awards 2268, 2345, and 2349, and finds substantial support through analogy in prior and subsequent awards. See Awards 685, 1646, 2073, and 2282. We adhere to the ruling announced in Award 2040.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claims are allowed.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of February, 1944.