

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**Third Division**

**Paul Samuel, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND STATION EMPLOYEES**

**NORTHERN PACIFIC RAILWAY COMPANY**

**DISPUTE.**—"Claim of G. J. Degen, employed at Jamestown, N. D., for eight hours' pay for services rendered on June 17, 19, 27, 28, 29, and 30, 1933, and on subsequent dates on which he performed less than eight hours' service at Jamestown freight and passenger station, and for which he was paid at pro rata rate for actual time worked."

**FINDINGS.**—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

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

This Division having assumed jurisdiction of this dispute for the purpose of making an Award, and said dispute having become deadlocked in this Division, and Paul Samuel having been called in as a Referee, rendered the following Award, which is concurred in by a majority of the members of this Division.

The parties have jointly certified the following statement of facts and the Third Division so finds:

"At Jamestown at the time this claim arose, one day and one night crew were employed in the warehouse. Regular truckers' positions had not previously been assigned with the day crew. Prior to January 5, 1933, two regular truckers' positions had been assigned with the night crew working five days per week. Effective after January 5, 1933, no regular truckers' positions were assigned with the night crew. The night crew came on duty at 3:30 a. m., and worked until 11:30 a. m.; the day crew came on duty at 8:00 a. m., and worked until 5:30 p. m. A regular assigned baggage man and a regular assigned baggage helper were employed at the passenger station.

"Some of the men from the freight station were used in combination service between the freight station and the passenger station.

"In addition to the regular forces, other men were called to work at the freight station and at the passenger station, or at both places. Men called to work at the passenger station performed service there from about 7:25 a. m. to about 9:30 a. m., after which they would either be released or would report to the freight station.

"In the afternoon additional men were called to work at the passenger station and would perform from two to four and one-half hours' service there.

"Mr. Degen was called and was used on the dates covered by this claim as follows:

"June 17th, 4 hrs. 30 mins., service at freight station.

"June 19th, 6 hrs. 45 mins., service at freight station.

"June 27th, 2 hrs. 10 mins., service at freight station.

"June 27th, 3 hrs. 50 mins., service at passenger station.

"June 28th, 4 hrs. 30 mins., service at passenger station.

"June 29th, 6 hrs., service at freight station.

"June 30th, 3 hrs. 45 mins., service at freight station.

"Commencing August 4, 1933, the assignments at Jamestown freight station were changed; day crew working from 7:30 a. m. to 4:30 p. m., and the night crew working from 4:30 p. m. to 1:30 a. m. Effective

March 26, 1934, the assignments at Jamestown freight station were again changed; day crew working from 9:00 a. m. to 6:00 p. m., and the night crew working from 3:00 a. m. to 11:30 a. m.

"At the time this claim arose trains arrived and departed at Jamestown as follows:

No.		Arrived	Departed	
1	M. L. Passenger-----	5:15 p. m.	5:20 p. m.	
2	M. L. Passenger-----	2:15 p. m.	2:20 p. m.	
3	M. L. Passenger-----	8:25 a. m.	8:40 a. m.	
4	M. L. Passenger-----	8:55 p. m.	8:50 p. m.	
121	M. L. Passenger-----	9:05 p. m.		Terminates at Jamestown.
122	M. L. Passenger-----		11:05 a. m.	Starts at Jamestown.
154	B. L. Mixed-----		8:35 a. m.	Do.
155	B. L. Mixed-----	5:15 p. m.		Terminates at Jamestown.
147	B. L. Passenger-----		8:50 a. m.	(Tues., Thurs., Sat.). Starts at Jamestown.
148	B. L. Passenger-----	1:45 p. m.		(Mon., Wed., Sat.). Terminates at Jamestown.
165	B. L. Mixed-----		8:50 a. m.	(Mon., Wed., Fri.). Starts at Jamestown.
166	B. L. Mixed-----	3:25 p. m.		(Tues., Thurs., Sat.). Terminates at Jamestown.
157	B. L. Mixed-----		9:00 a. m.	Starts at Jamestown.
158	B. L. Mixed-----		9:00 a. m.	Terminates at Jamestown.
761	M. L. Local-----	2:45 a. m.		(Tues., Thurs., Sat.). Terminates at Jamestown.
782	M. L. Local-----		7:30 p. m.	(Sun., Wed., Fri.). Starts at Jamestown.
779	M. L. Local-----	3:35 a. m.		(Mon. and Fri.). Starts at Jamestown.
780	M. L. Local-----	11:10 a. m.		(Tues. and Sat.). Terminates at Jamestown.

"There have been some changes in arrival and departure of trains at Jamestown and the following shows these changes:

No.	Arrived	Departed
2-----	2:07 p. m.	2:12 p. m.
3-----	8:00 a. m.	8:13 a. m.
121-----	8:40 p. m.	
122-----		8:00 a. m.
154-----		8:15 a. m.
163-----	3:45 p. m.	
158-----	4:35 p. m.	

There is in evidence an Agreement between the parties, bearing effective date August 15, 1922, governing wages and working conditions of the employees therein designated, from which Agreement the parties respectively cite and rely upon the following rules, 22, 52, and 54, to-wit:

"**RULE 22. Scope of roster.**—Seniority rosters will show the name, proper dating, title, and location of employes, except that names of laborers will not be included and their seniority rights will not apply until they have been in continuous service of the railroad in excess of six (6) months."

"**RULE 52. Day's Work.**—Except as otherwise provided in this article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work."

"**RULE 54. Reporting and not used.**—Hourly-rated employes whose seniority entitled them to regular employment, required to report at regular starting time and place for a day's work and when conditions prevent work being performed, will be allowed a minimum of three (3) hours' pay at pro rata rates. If held on duty over three (3) hours, actual time so held will be paid for. If required to work any part of the time so held and through no fault of their own are released before a full day's work is performed, will be paid not less than eight (8) hours' pay unless they lay off of their own accord. This guarantee will not be construed to apply to those who are employed to take care of the fluctuating work that cannot be handled by regular forces."

Petitioner contends that Rule 52 is a "guarantee rule", that is to say, eight hours are guaranteed to an employee when he is called upon by the carrier and through no fault of the employee he is denied eight hours' work; that there was sufficient work at Jamestown to provide Mr. Degen with an eight hour assignment, and that the carrier is, therefore, under petitioner's interpretation of Rules 22 and 52, without right to deny Mr. Degen eight hours of work each day.

The carrier's position is that Rule 54 is an exception to Rule 52, and that the work performed by Degen was *fluctuating* and that, therefore, his employment comes within Rule 54, which permits the carrier to employ hourly-rated employees on *fluctuating* work which cannot be handled by regular forces.

The Referee is of the opinion that the Award in Docket CL-126 is controlling in this dispute.

#### AWARD

Claim remanded to the parties with instructions to clarify the rules through negotiation or adjust by conference.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,  
*Secretary.*

Dated at Chicago, Illinois, this 28th day of January 1936.