

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

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

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

DISPUTE.—

"Claim of Mr. James Turner, Clerk, Salt Lake City Freight Station, for difference between time actually allowed and Check Clerk's rate of pay, subsequent to December 4, 1934, in accordance with Rules 43 and 61 of the current agreement."

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

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 following statement of facts is jointly certified by the parties, and the Third Division so finds:

"Dec. 4, 1934, and thereafter during that month Mr. James Turner was used either as Check Clerk or Receiving Clerk and paid for time actually worked in each of these occupations at the rate applicable.

"Claim is now made for difference in pay between amount allowed and Check Clerk's rate of pay \$5.15 per day for the following working days of December, 1934, and correspondingly thereafter when used in the same manner."

Date	Check Clerk, \$5.15 per day	Receiving Clerk, \$4.66 per day	Date	Check Clerk, \$5.15 per day	Receiving Clerk, \$4.66 per day
4.....	6 hours.....		18.....		3 hours.
5.....		4 hours.	19.....		4 hours.
6.....		5 hours.	20.....		8 hours.
7.....	5 hours.....		21.....		4 hours.
8.....		8 hours.	24.....	5 hours.....	
10.....	8 hours.....		26.....	8 hours.....	
11.....		7 hours.	27.....		8 hours.
12.....		7 hours.	28.....		7 hrs. 40 mins.
14.....		7 hours.	29.....		3 hours.
15.....		8 hours.	31.....	8 hrs. 15 mins.	
17.....	4 hours.....	4 hours.			

There is in evidence an agreement between the parties bearing effective date of February 1, 1926, and the following rules thereof have been cited:

"RULE 43

"Except as otherwise provided in this Article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work.

"RULE 45

"Employees required to report for work at regular starting time and prevented from performing service by conditions beyond control of the carrier, will be paid for actual time held, with a minimum of two (2) hours.

"If worked any portion of the day, under such conditions, up to a total of four (4) hours, a minimum of four (4) hours shall be allowed. If worked in excess of four (4) hours, a minimum of eight (8) hours shall apply.

"All time under this rule shall be at pro rata.

"This rule does not apply to employees who are engaged to take care fluctuating or temporarily increased work which cannot be handled by the regular forces; nor shall it apply to regular employees who lay off of their own accord before completion of the day's work.

"RULE 61

"Employees covered by Groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly or hourly basis shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.

"Nothing herein shall be construed to permit the reduction of days for the employees covered by the rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

The petitioner contends that the claimant in this case holds seniority rights in the local agent's seniority district as of May 10, 1917; that during the month of December 1934 he worked as Check Clerk, Salt Lake Freight Station and outside industries, but that he was paid only for time actually worked; that the claimant worked every day he was available, with the exception of December 22, on which day he was not permitted to work; that all of the work performed by the employe in question carries a daily rate, namely Check Clerk, \$5.15, and Receiving Clerk, \$4.66, per day, and that the provisions of Rules 43 and 61 govern.

The carrier contends that owing to a continued decrease in freight traffic at this station, a reduction in force was made among the warehouse employes, effective February 24, 1933, and that James Turner was displaced by Head Delivery Clerk; that thereafter claimant was considered by the carrier as part of the fluctuating force, with no regular starting time, assignment or tour of duty; that during the month of December 1934 claimant was called and used as part of the fluctuating force; that during this month there were three regularly assigned Check Clerks and one regularly assigned Head Delivery Clerk, and that in addition to Turner and the regularly assigned Check Clerks and Delivery Clerk, it was necessary to call and use as Check and Receiving Clerks, five other members of the fluctuating force during the month of December 1934, and that the last paragraph of Rule 45 applies to service performed by Turner during the period in question.

The Division finds that James Turner was not part of the fluctuating force and should have been compensated for not less than eight hours at rate of position occupied on each of the days he was used under Rule 43, except that on December 17, when he occupied two different positions, he should have received the higher rate for the entire day. He did not, however, occupy a regular position, his status being that of an extra employe on extra work and the six-day guarantee in Rule 61 does not apply.

AWARD

Claim sustained to the extent of above finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1936.