

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM.—

"Claim of Earl A. Miller, trucker, Jamestown, N. D., for overtime rate of pay for services performed from 12:01 A. M. to 8:55 A. M., Sunday July 22, 1934, less meal period of one hour. Time involved is seven hours and fifty-five minutes."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"A night warehouse crew was employed at Jamestown, hours of duty 3:00 A. M. to 11:30 A. M., with a meal period of thirty minutes. This crew was assigned to work daily except Sunday. On Saturdays extra men were called to commence work at 11:55 P. M. These men handled freight at the warehouse until about 6:30 A. M., when they went to the passenger station where they handled mail, cream, and baggage on passenger trains until about 8:55 A. M. On Saturday, July 21st, 1934, Mr. Miller, an extra man, was called for service at 11:55 P. M., and worked until 8:55 A. M., Sunday, July 22nd, less a meal period of one hour. He was paid straight time for service performed; he claims that he should be paid overtime rates for service performed from 12:01 A. M. to 8:55 P. M. Sunday, less meal period of one hour."

An agreement between the parties bearing effective date of August 15, 1922, is in evidence, from which Rule 63 thereof is cited:

"NOTIFIED OR CALLED.—RULE 63. Except as provided in Rule 64, employees notified or called to perform work not continuous with, before, or after the regular work period or on Sundays and specified holidays shall be allowed a minimum of three (3) hours for two (2) hours' work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

POSITION OF EMPLOYEES.—Employees contend that this practice is in violation of Rule 63 of the agreement. To obviate the necessity of calling Mr. Miller and the crew of which he was a member each Saturday night, the agent included in a Bulletin Notice having for its purpose reassignment of service hours of regular forces, notice to this extra crew that it would perform service regularly each Saturday night beginning at 11:55 P. M. The work which Mr. Miller and his crew were required to perform on a "call" basis was work which is regularly performed 6 days per week by a regular assigned crew assigned to work from 3:00 A. M. to 11:30 A. M. daily, Monday to Saturday, inclusive.

The instructions issued by the carrier and the actual performance of work by Mr. Miller under those instructions clearly evidence the fact he was being worked on a "call" basis to perform work which was regularly performed 3:00 A. M. to 11:30 A. M. daily. The action of the carrier in requiring Mr. Miller and his crew to begin work at 11:55 P. M. Saturday nights was intended to evade Rule 63, which requires that Sunday "call" work be paid at the rate of time and one-half.

POSITION OF CARRIER.—The use of extra men commencing work at 11:55 P. M. Saturday was necessary to take care of the service requirements. Perishable freight from Duluth, St. Paul, and Minneapolis reached Jamestown Saturday evening and was handled at the warehouse and forwarded on the first trains Sunday morning. These extra men were also used to work the passenger trains arriving and departing prior to 9:00 A. M. Sunday.

There is no dispute that the service of Mr. Miller commenced on Saturday; therefore, the service which he performed attaches to the day on which such service was started. This practice has been followed on the Northern Pacific prior and subsequent to the negotiations of the Clerks' Agreement. To illustrate: If an employe commences work at, say, 10:00 P. M. Saturday and works until 7:00 A. M. Sunday, with a meal period of one hour, he is allowed straight time rates for the eight hours of service. If such employe had worked six days and commences work at 10:00 P. M. Sunday, working until 7:00 A. M. Monday, with a meal period of one hour, he would be allowed overtime rates for the eight hours of service. In other words, there has been no segregation of straight time and overtime payments on the basis of the work performed on Sunday; this has been determined on the basis of when the service commenced. Had Mr. Miller started work at any time after 4:00 P. M. Saturday and previous to midnight, and worked into Sunday, he would, under a practice of many years' standing, be paid straight time rates for the first eight hours of service. He was so paid in the present case.

A case involving the same principle arose in 1927. At Mandan, N. D., the warehouse force was worked commencing on December 24th and 31st prior to midnight. The employes contended that for the service performed from 12:01 A. M. to 6:00 A. M. December 25th and January 1st overtime rates should be paid. This claim was withdrawn. In the General Chairman's letter of June 13, 1927, withdrawing it he recognized there was no basis; therefore when he stated:

"There are some features in connection with this claim that should receive due consideration in the event of a Schedule revision."

In the case referred to, the General Chairman of the Brotherhood of Railway Clerks admitted there was no rule to sustain a claim of this kind; he stated that if such a claim was to be allowed it would be necessary to negotiate a rule to cover such payments. The employes are now asking your Board to render a decision which will establish such a rule. It is admittedly not within the jurisdiction of your Board to grant new rules or change the provisions of existing agreements.

OPINION OF BOARD.—The Board considers that there was no violation of the agreement. A shift commencing on Saturday and ending on Sunday is a Saturday assignment, and rules providing for punitive payment are not applicable in this instance.

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 employes involved in this dispute are, respectively, carrier and employes 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 agreement does not sustain the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

Attest: H. A. JOHNSON
Secretary

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