

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
ST. PAUL UNION DEPOT COMPANY**

STATEMENT OF CLAIM.—

"Claim of employes that assignment of Gateman N. A. Lizotte and relief Gateman Geo. Walker at the St. Paul Union Depot, under bulletin No. 201, dated April 13, 1933, and assignment of Gateman Peter Sherin under bulletin No. 240 of Jan. 27, 1936, was a violation of existing schedule rules agreement dated Aug. 1, 1924, and particularly Rules 39, 43, and 45 thereof, and that above named employes should be compensated for all time in excess of eight consecutive hours exclusive of the meal period from time of first reporting for duty until final release, retroactive to April 13, 1933."

STATEMENT OF FACTS.—Effective April 13, 1933, bulletin No. 201, covered the assignment of one gateman, with hours 11:45 A. M. to 2:00 P. M. and 6:00 P. M. to 11:30 P. M., and a relief gateman with the same hours, Wednesday of each week.

Effective Feb. 1, 1936, bulletin No. 240 covered the assignment of one gateman with hours 11:15 A. M. to 2:00 P. M. and 6:15 P. M. to 11:30 P. M.

An agreement between the parties bearing effective date Aug. 1, 1924, is in evidence, from which the following rules are cited:

"**RULE 39. 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 43. Intermittent service.**—Where service is intermittent, eight hours' actual time on duty within a spread of twelve (12) hours shall constitute a day's work. Employes filling such positions shall be paid overtime for all time actually on duty or held for duty in excess of eight (8) hours from the time required to report for duty to the time of release within twelve (12) consecutive hours, and also for all time in excess of twelve (12) consecutive hours computed continuously from the time first required to report until final release. Time shall be counted as continuous service in all cases where the interval of release from duty does not exceed one (1) hour.

"Exceptions to the foregoing paragraph shall be made for individual positions when agreed to between the Management and duly accredited representatives of the employes. For such excepted positions the foregoing paragraph shall not apply.

"This rule shall not be construed as authorizing the working of split tricks where continuous service is required.

"Intermittent service is understood to mean service of a character where during the hours of assignment there is no work to be performed for periods of more than one (1) hour's duration and service of the employes cannot otherwise be utilized.

"Employes covered by this rule will be paid not less than eight (8) hours within a spread of twelve (12) consecutive hours.

"**RULE 45. Overtime.**—Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period, on any day will be considered overtime and paid on the actual minute basis at the rate of time and one-half.

"**RULE 45 (a).** Employees directed to work overtime will, when possible, be excused from such overtime period if others can be substituted in their place. Employees desiring to avoid overtime for their personal convenience should notify their foreman as much in advance as possible in order to make necessary arrangements to meet request."

POSITION OF EMPLOYEES.—Employees contend that assignments of Gate-men Lizotte, Walker, and Sherin under bulletins 201 and 240 constitute split tricks and are in violation of Rules 39 and 43; that other gatemen are on duty performing this work during the periods of release of those named.

POSITION OF CARRIER.—Carrier claims the service is intermittent and assignment in question is permissible under Rule 43. Carrier further objects to inclusion in claim of period from April 13, 1933, to Feb. 1, 1936, under bulletin No. 201, as entire handling of claim on property involved only one assignment under bulletin No. 240, effective Feb. 1, 1936.

OPINION OF BOARD.—The position assigned to intermittent service under bulletin No. 240, six days per week, superseded the position similarly assigned under bulletin No. 201. It is not claimed that there was at any time more than two positions improperly assigned, one six day per week assignment and the one day per week relief assignment. The questions for determination by the Board are whether service is intermittent on the positions in question, and if it is permissible under Rule 43 to assign the two positions involved on a split trick basis. Evidence of record shows that during the periods of release of employees occupying positions in question, other gatemen are on duty performing this work during the periods of release of those named. Such assignments are not permissible under Rule 43. Evidence further shows that claims in this case were based on bulletin Nos. 201 and 240, the latter being effective Feb. 1, 1936; that no protest was filed in connection with original assignments under bulletin No. 201, effective April 13, 1933, and that this dispute was handled on the property only for the period subsequent to Feb. 1, 1936.

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 assignments of the two positions involved to intermittent service or on a split trick basis under bulletin Nos. 201 and 240 are in violation of Rule 43, and employees should be compensated under Rule 45, effective from Feb. 1, 1936.

AWARD

Claims sustained effective from Feb. 1, 1936.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1937.