

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of A. V. Shaw, weighmaster at Auburn, for time and one-half for service performed on Sundays, Dec. 9, 1935, to Nov. 2, 1936, inclusive."

STATEMENTS OF FACTS: The following statement of facts was jointly certified by the parties:

"Mr. Shaw was assigned to position of weighmaster at Auburn yard office. The duties of this position consisted of weighing cars and performing general yard clerk's work including the checking and carding of trains, checking cars and other work incident to the movement of trains. Mr. Shaw was assigned to work from Tuesday to Sunday, inclusive, and had his day of rest on Monday. When he was not on duty on Monday his position was not filled, but his work was taken care of by other yard office employees who were on duty.

"Mr. Shaw presented claim on Sept. 16, 1936, for time and one-half for Sunday service, retroactive to December 9, 1935."

POSITIONS OF PARTIES: The positions of the parties on the construction of the Sunday rule is the same as that set forth in Docket CL-588, Award 594, and therefore will not be repeated.

In addition, however, the carrier contends that a portion of the claim in this instance is barred by the operation of Rule 41, which reads:

"Grievances.—An employe who considers himself otherwise unjustly treated shall have the same right of hearing and appeal as provided above if written request is made to his immediate superior within ten (10) days of the cause for complaint."

OPINION OF BOARD: The principal question, that is, the interpretation of the Sunday rule has been discussed at length in the preceding docket, Award 594, and consequently will not be repeated here. The cases are similar with respect to the facts.

As to the carrier's contention, however, that a part of the claim is barred by the operation of Rule 41, the Board is of the opinion that it is sound, and that the claim so far as it relates to Sundays more than 10 days before Sept. 16, 1936, is barred. There is a sharp conflict of authority on whether Rule

41 should be deemed to be a cut-off rule or should be limited to situations analogous to discipline. In Award 417 this Board held that it was a limitation on grievances of the sort here involved while in Award 444 it held to the contrary. It is considered that Award 417 represents the weight of authority on the subject and it is consequently followed. This, of course, does not bar complaint at any time concerning a continuing violation; it merely limits retroactive reparation to ten days before complaint.

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 A. V. Shaw, weighmaster at Auburn, is entitled to time and one-half for service performed on Sundays from 10 days previous to Sept. 16, 1936, to and including Nov. 2, 1936.

AWARD

Claim sustained to the extent indicated by the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1938.