

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

THE DENVER & RIO GRANDE WESTERN RAILROAD CO.

Wilson McCarthy and Henry Swan, Trustees

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the working of employes in the Freight Traffic Department, Denver, Colorado, on Washington's Birthday (Feb. 22nd, 1937) at pro rata rate was in violation of Rule 59 of the current agreement and that the Carrier should be required to pay such employes for wage losses represented by the difference between pro rata rate and time and one-half rate."

STATEMENT OF FACTS: On Washington's Birthday (Feb. 22nd, 1937) certain employes of the Freight Traffic Department, Denver, Colo., were worked and paid pro rata time and the Organization claimed they be paid at rate of time and one-half.

There is in evidence an agreement between the parties, bearing effective date Feb. 1, 1926.

EMPLOYEES' POSITION: "The Organization contends that Rule 59 of the existing agreement between the Denver & Rio Grande Western Railroad and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees is clear and admits of no misinterpretation. Rule 59 provides:

'Work performed on Sunday and the following legal holidays—namely—New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the Carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday, if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate.'

"It is true that these employes in question did sign a waiver of overtime which was presented to them by their superior officer, but we deny that it was a voluntary action on the part of the employes and further deny the right of an individual employe or an individual officer to waive any of the provisions of the existing agreement.

vided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employees necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate.'

"The Carrier contends there is no rule in the agreement with the Clerks' Organization which prohibits it from recognizing and acting upon requests from individual employees who for their own convenience request certain deviations from the established practices, and further contends that as result of its desire to accommodate these particular employees it should not be penalized.

"For the information of the Board will say that subsequent to March 8, 1937, when the overtime work was stopped, these employees were notified that it would be necessary for them to continue to work Saturday afternoons for a period of time until the work on the tariffs was completed. At this time they again made a direct request that they be permitted to work evenings instead of Saturday afternoons with the understanding, of course, no overtime would accrue for such night work. However, as result of the instant claim then being before us the request of the employees was denied."

OPINION OF BOARD: At the oral hearing the parties agreed that the claim was limited to the three individuals shown in the Carrier's Position. Under all the facts involved in this particular case, the employees named should have been compensated at rate of time and one-half for services performed on the holiday, Feb. 22, 1937, in accordance with Rule 59.

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 employees involved in this dispute are respectively carrier and employees 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 Messrs. M. W. Weldon, C. L. Sexton and R. A. Fisher be compensated at rate of time and one-half for services performed on February 22, 1937.

AWARD

Messrs. M. W. Weldon, C. L. Sexton and R. A. Fisher shall be compensated at rate of time and one-half for services performed on February 22, 1937.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1938.