

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Royal A. Stone, 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 W. E. Conrad, janitor-binder at Spokane Freight Station, for payment of eight hours at time and one-half rate instead of pro rata rate for eight hours service performed on Sunday, November 27, 1938, and all subsequent Sundays on which he was required to work, based on Rule 69."

JOINT STATEMENT OF FACTS: "One of the duties of the janitor-binder position at Spokane Freight Station is to attend the furnace during the season of the year that it is necessary to furnish heat. During the season of the year that it is necessary to furnish heat at Spokane Freight Station the position of janitor-binder is assigned to seven days service per week, and during the season of the year that it is not necessary to furnish heat the position is assigned to six days service per week. During the year 1938 the position was assigned to six days service per week from May 29 to November 26. Effective November 26, 1938, the position was assigned to seven days service per week and this assignment continued in effect until May 13, 1939. Mr. Conrad occupied the position of janitor-binder from February 17, 1933, to April 30, 1939.

"From May 29 to November 26, 1938, inclusive, Mr. Conrad was assigned to six days service per week with Sunday as day of rest, his position not being filled on Sundays account not necessary to furnish heat. Effective Saturday, November 26, 1938, Mr. Conrad was assigned to six days service per week with Saturday as day of rest, his position being filled on Saturday by an extra employee. Mr. Conrad has made claim for payment of eight hours at time and one-half rate instead of eight hours at pro rata rate for service performed on Sunday, November 27, 1938, and subsequent Sundays."

POSITION OF EMPLOYES: "It is the position of the Employees that Mr. Conrad, and any other employee occupying the position of janitor-binder at the Spokane Freight Office under similar conditions, should be paid time and one-half rate for all Sunday service. Rule 69, Clerks' Agreement, covers the situation and reads as follows:

'Rule 69. Work performed on Sundays 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 employees necessary to the continuous operation of the carrier and who

"Each of these conditions are fulfilled in the case now before you.

"In presenting this case to the Management the Employees have contended that it was possible to assign Sunday as a day of rest for Mr. Conrad and as he was not assigned Sunday as a day of rest he is entitled to time and one-half rate for service performed on Sunday. There is nothing in Rule 69 that would sustain such a contention. The rule was designed to permit the Carrier to pay pro rata rate on all days of the week except holidays on positions necessary to the continuous operation of the Carrier. The rule simply provides that if an employee is not given his day of rest, whether it be Sunday or some other day, that for service performed on the rest day the employee will be paid at rate of time and one-half. If the rule is interpreted as the Employees now contend it would be meaningless and the Carrier would be required to pay time and one-half rate for Sunday when it is not the rest day and also for service performed by the assigned employee on his rest day.

"Carrier's Exhibit 'B' covers a case that arose in 1938. In that case a caller at Auburn was regularly assigned to a seven day position necessary to the continuous operation of the Carrier and was assigned Saturday as day of rest. The claim in that case was for time and one-half rate for service performed on Sunday, it being the Employees' contention that it was possible to relieve this employee on Sunday. The claim was withdrawn.

"Particular attention is called to the last clause of Rule 69 which reads as follows:

"* * * when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate."

This portion of Rule 69 is applicable to the instant case. Mr. Conrad was assigned Saturday as day of rest and therefore is only entitled to pro rata rate for service performed on Sundays. In connection with this phase of the claim we wish to call the attention of your Board to the following excerpt from the Opinion of the Board in Northern Pacific case involving Rule 69, covered by Award No. 596, reading as follows:

"The exception relieves the Carrier of payment of time and one-half to the regular incumbent of a seven-day position if he works Sunday."

Your Board recognized that an employee regularly assigned to a seven day position with a day other than Sunday as day of rest, is not entitled to time and one-half rate for service performed on Sunday.

"The position occupied by Mr. Conrad on November 27, 1938, and the subsequent Sundays covered by this claim was a position necessary to the continuous operation of the Carrier; it was filled during this period seven days per week; Mr. Conrad was given an assigned day of rest in conformity with Rule 69. There is nothing contained in Rule 69 that would sustain a claim for time and one-half rate for service performed on Sundays during the period covered by this claim."

OPINION OF BOARD: Under Rule 69 the involved employee was not "necessary to the continuous operation of the carrier." Therefore, under the circumstances of this case, for his Sunday work he should be compensated on the basis of overtime as required by the Rule.

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 employee involved in this dispute are respectively carrier and employee 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 there has been a violation of the Agreement to the extent indicated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of April, 1941.