

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**

CHICAGO GREAT WESTERN RAILROAD COMPANY

(Patrick H. Joyce and Luther M. Walter, Trustees)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"The incumbents of the positions of Chief Clerk in Freight Station at St. Paul, Kansas City and Omaha, Clerk in Trainmaster's office at St. Paul, Oelwein, Des Moines and Clarion, Clerk-Stenographer to Claim Agent at St. Paul and Oelwein, Secretary to the Division Superintendent at St. Paul, Oelwein and Des Moines and others listed in paragraph (c) of Rule 1, be compensated on a daily basis and at the rate of time and one-half for required services performed on Sundays and Holidays since August 15, 1939 instead of at a monthly rate of pay."

EMPLOYES' STATEMENT OF FACTS: "The current working agreement, bearing effective date of August 15, 1939, between the carrier and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes was revised with final agreement reached through mediation. A copy of the National Mediation Agreement Case No. A-590 of August 1, 1939 is attached hereto as Employes' Exhibit 'A.'

"Subsequent to the date of the revised agreement the carrier compiled and submitted to the General Chairman statement of rates of pay of all positions under the revised agreement, which includes the positions listed in the Scope Rule 1, paragraph (c). The rates of pay of these positions which are involved in this case were listed at a monthly rate of pay. A statement of these positions, as listed in paragraph (c) of Rule 1, with rates of pay as submitted by the carrier is attached hereto as Employes' Exhibit 'B.'

"The incumbents of certain positions as outlined in statement of claim are required to report and perform service on every Sunday and Holiday, while some every other Sunday and Holidays and others only when called on Sundays or Holidays, for which additional service the carrier refuses to compensate said employes.

"The work and duties performed by these employes on Sundays and Holidays are of clerical and stenographic nature that is similar to what they perform on week days."

POSITION OF EMPLOYES: "The employes cite the following rules in the Agreement, effective August 15, 1939:

"As to the request that these employes be paid on a daily rate rather than a monthly rate, the Carrier desires to point out that since these employes are not entitled to any extra payment beyond their monthly salary for any work they may perform for the Carrier at any time there is really no reason for the conversion of their rates from monthly to daily rates. Inasmuch as these men even though they were on a daily rate are not entitled to any extra compensation for any work which they may perform at any time during the year for the Carrier, regardless of whether they are on a monthly or a daily rate, the Carrier has already previously advised the General Chairman that if they so desired it is willing to pay these men on a daily basis; however, by so doing it would not change the compensation of these employes because of the fact that Rule 46 provides in part:

"The conversion to a daily basis of monthly, weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect."

Therefore, the employes would not receive any greater compensation during the year when on a daily basis than they are now receiving on a monthly basis, although they may work a few extra hours on Sundays or Holidays or in the evening after working hours, or at other times during emergency.

"The Carrier desires to state further for the information of the Board that a majority of these employes are not as a general thing required to work anything more than 8 hours per day and 6 days per week and in the case of more than half of these men, not even 8 hours on the 6th day of the week. The few covered by this rule who are required to report on Sundays and Holidays usually are not required to report at any fixed time nor are they required to work any specified number of hours on these days, but just come in and take care of whatever is necessary to be handled immediately which seldom amounts to more than a couple of hours work.

"Under the circumstances, it is the opinion of the Carrier that the National Mediation Board should interpret Rule 1 (c) of the agreement; however, if the Third Division of the National Railroad Adjustment Board assumes jurisdiction the claim should be denied, because to rule otherwise would eliminate the intent and purpose of the rule which the Carrier does not agree is within the province of this Board."

OPINION OF BOARD: The involved employes are subject to the controlling Agreement under Rule 1 thereof. But they are placed beyond operation of the "Promotion, Assignment, Displacement and Overtime rules" by paragraph (c) of that Rule.

The issue is as to whether these employes are claiming additional compensation for overtime.

The argument for the brotherhood, that Rule 45 is a Sunday and holiday and not an overtime rule, is ingenious but not persuasive.

The whole subject matter of Rule 45 is "work performed on Sundays and" the enumerated holidays. It requires that such work "shall be paid at the rate of time and one-half," except for employes necessary to continuous operation. If they are required to work on "such regularly assigned seventh day off duty," the pay will be "at the rate of time and one-half time."

The conclusion is inescapable that in railroading, as in industry generally, any time paid for on the overtime basis of one and one-half is considered overtime. Heretofore that understanding has been universal.

If it be needed, confirmation of that view for railroading is found in Article IV, Sec. 2 of Supplement 4 to General Order No. 27. It reads as follows: "The only rates named herein are for an eight hour day and one and one-half time will be paid for all overtime **including** (emphasis supplied) Sundays and the following holidays."

Certainly, that is convincing that overtime, as generally understood, includes all Sunday and holiday work paid for on the conventional overtime basis of time and one-half. That being so, Rule 45 is an overtime as well as a Sunday and holiday rule. It awards overtime compensation for the stated work. It is therefore, as an overtime rule, one of those which under Rule 1 (c) does "not apply" to these employees.

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 no violation of the Rule is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of April, 1941.