

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Herbert B. Rudolph, Referee

**PARTIES TO DISPUTE:**

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

**THE DENVER AND RIO GRANDE WESTERN RAILROAD  
COMPANY**

(Wilson McCarthy and Henry Swan, Trustees)

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood—

(1) That the Carrier violated the agreement revised as of February 1, 1926, when it assigned or required hourly rated freight platform employees at Salt Lake City to work regularly and failed and refused to pay such regularly worked employees a minimum of eight hours per day.

(2) That Harry Olson, Alvin Bridge, Jack Padley, Joseph Child, John Bell, Randolph Farris, C. F. Harland, Ross Jones, Jared Simister, William Salisbury, Fritz Olson, H. W. Holland, A. W. Hilton, Dell Birch, Bert Mendenhall, H. D. Hanson, Hyrum Pocock, Myrall Warburton, George Jones, James Lloyd, C. B. Olson, George Black, and Frank Thomas were and are entitled to and shall be paid a minimum of eight hours for each day worked between May 1, 1937 and April 25, 1941, and all other employees engaged in handling freight on that platform who have been worked and paid under similar conditions.

**JOINT STATEMENT OF FACTS:** This dispute is a re-submission in part of case covered by National Railroad Adjustment Board, Third Division, Award No. 1211 (Docket No. CL-1189) dated October 28, 1940, particularly Item (3) thereof, the award with respect to that Item reading:

“Item 3 sustained to extent shown in Opinion, otherwise remanded with permission to resubmit if not settled in negotiations.”

Item (2) of Award 1211 was disposed of.

Item (3), so far as the month of April, 1937 is concerned, was likewise settled and, as result of a newly negotiated and revised rule between the parties effective April 25, 1941, the dispute is not evidence for dates subsequent to April 25, 1941, but the parties were unable, after prolonged negotiations, to arrive at a settlement covering the period from May 1, 1937 to April 25, 1941.

**POSITION OF EMPLOYES:**

Re-submission of Award No. 1211,  
National Railroad Adjustment Board, in connection with Short-hour Work,  
Salt Lake City, Utah.

Item 1 of claim covered by Award No. 1211 reads:

“(1) That the Carrier has violated and continues to violate the agreement revised as of February 1, 1926, when it assigns or requires

Denver, Colorado Springs and Pueblo are located on the Pueblo Division, and in line with the agreement reached in mediation on April 25, 1941, claims for these three points were disposed of in accordance with letter agreement between the parties dated April 25, 1941, copy attached as Carrier's Exhibit "B."

Salida and Grand Junction are located on the Grand Junction Division, and in line with the agreement reached in mediation on April 25, 1941, claims for these two points were disposed of in accordance with letter agreement between the parties dated April 25, 1941, copy attached, as Carrier's Exhibit "C."

Alamosa and Montrose are located on the Alamosa Division, and in line with the agreement reached in mediation on April 25, 1941, claims for these two points were disposed of in accordance with letter agreement between the parties dated April 25, 1941, copy attached, as Carrier's Exhibit D.

The Board will note that for all of the freight stations on the system as enumerated above, the Carrier agreed to pay stowers, callers, and truckers on the basis of a minimum of four hours if worked continuously four hours or less, and a minimum of eight hours if more than four hours of continuous service, exclusive of the meal period, at pro rata rates from the date the claims were originally submitted, except this settlement did not include employees who had left the service, employees who attended day school, employees who had part or full time work elsewhere and who were not available, and employees who did not work three or more days per week.

Since April 25, 1941, these classes at all points including Salt Lake City and Ogden, Utah, are being paid on the 4-8 hour basis under the provisions of the Mediation Agreement of April 25, 1941.

As a part of the negotiations in this involved situation, the Carrier made the same offer in regard to the pending claims at Salt Lake (covered by that part of Item 3 for further negotiation) as was made and accepted by the Organization on all divisions of the Carrier, other than the Salt Lake Division.

It is the contention of the Carrier that—

Mediation Settlement of April 25, 1941, providing that these employees would be paid on the basis of four hours if worked continuously four hours or less, and a minimum of eight hours if worked more than a minimum of four hours, exclusive of meal period, at pro rata rates; and the settlement of pending claims on all divisions, other than the Salt Lake Division, on the same basis as outlined in the Mediation Agreement, set a definite yard stick as to a fair and equitable settlement of the pending Salt Lake claim.

That the Carrier's offer in negotiation of settlement of the pending Salt Lake claims on the same basis as pending claims of all other divisions were settled, was a reasonable offer and should be so found by this Board.

**OPINION OF BOARD:** This Docket purports to be a re-submission in part of the dispute covered by Award 1211. In that Award it was held with regard to Item 3 that this item should be subject to further conferences and negotiations between the parties, and in the event an adjustment is not reached "the matter can be resubmitted to this Board with a complete and detailed record of the services performed by these employees." A casual reading of the above record will disclose that no record of the services performed by the employees has been submitted, and obviously it is impossible to render an award based upon services performed.

While the Opinion in Award 1211 states that the Board has "attempted in this opinion to lay down rules to guide the parties" a careful study of the Opinion has failed to disclose the rules intended to govern Item 3, subsequent to April 1937. It is apparent also, from the contentions set forth

in the record, that the parties to this dispute were unable to discover any such rules. Employees contend that in negotiation with the carrier following Award 1211 it was agreed that "employees who were worked three or more days a week would be considered as working with a degree of regularity." No such three day rule can be found in Award 1211. Neither can any rules laid down in Award 1211 be found to support the basis upon which the carrier has offered settlement.

This dispute is of long standing and the record discloses an honest difference of opinion between the management and the employees as to the application of a standard to govern. This difference of opinion finally resulted in mediation and the rule effective April 25, 1941. Similar claims to those here involved were settled by the parties following the effective date of the new rule, and all subsequent to Award 1211.

No facts having been submitted to the Board in addition to the facts submitted in Award 1211, it is obvious that the Board is in no better position to render an award than it was before. It is not the function of this Board to act as a board of mediation, and we make no such attempt, but it is our opinion that this claim should be settled on the property as many other similar claims have been settled. There being no facts upon which to base an award we again refer the controversy to the parties.

**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 the controversy be referred to the parties.

#### AWARD

Controversy referred to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1942.