

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

1. When it required the Roundhouse Clerk at Appleyard, Washington, to work Saturday afternoons other than in emergencies and refused to compensate the employe on overtime basis, and

2. That Ione Newton, Clerk in the Roundhouse Office at Appleyard, Washington, shall be compensated for the additional four hours' time worked on Saturday afternoon, March 31, 1945 and, likewise, for each Saturday afternoon worked subsequent to March 31, 1945, at time and one-half rate.

EMPLOYEES' STATEMENT OF FACT: Prior to March 31, 1945, it had been the practice to allow the Clerk in the Roundhouse Office at Appleyard, Washington, Saturday afternoon off. On Saturday afternoon, March 31st, 1945, and subsequent Saturday afternoons, the Carrier requested Ione Newton to work, failing and refusing to compensate her at the rate of time and one-half for the four additional hours worked.

POSITION OF EMPLOYEES: There is in effect an Agreement bearing the date of Dec. 1, 1944, in which the following Rules appear:

"Rule 29—Saturday Afternoon Service—Where, in a given office, it has been the practice to let employes off for a part of the eight (8) hour day on certain days of the week, such practice shall not be rescinded and shall not be departed from except in cases of emergency."

"Rules 36—Overtime—Except as provided in Rules 18, 34, 38, 43, 44 and 45, time on duty in excess of eight (8) hours, exclusive of the meal period, in any consecutive 24-hour period will be considered overtime and paid on the actual minute basis at the rate of time and one-half."

"Rule 37—Assignment of Overtime—When overtime work is required by the Company, the incumbent of the position to which such overtime work is necessary shall be given preference in its performance. The same principle shall apply in working extra time on

noons than did Mrs. Cannon, since we are advised that Mrs. Cannon was not only experienced in this work but a highly competent and very fast worker, while our advice on Miss Newton is that she is a slow worker and takes much longer to complete her work than did Mrs. Cannon. Therefore, it follows that under the practice at Appleyard of letting the clerk go on Saturday afternoons at such time as her work was completed, Mrs. Cannon would undoubtedly have been able to leave much earlier than Miss Newton, but even with this advantage, it will be noted that she states that in 31 months she left about half a dozen times at noon, about 15 or 20 times around 1:30 or 2 o'clock, and the rest of the time later, sometimes as late as 5 P. M.

The Carrier, therefore, again directs the attention of the Board, first, to the fact that there was no definitely established practice at Appleyard as to the roundhouse clerk's leaving at any specific hour on Saturdays, the practice being to permit her to leave when her work was completed whenever that might be between noon and 5 o'clock; and, second, we wish to point out that this practice has been neither rescinded nor departed from, and that if Miss Newton's quitting time on Saturday afternoons is later than was that of Mrs. Cannon, it is attributable entirely to the fact that it takes her longer to clean up her work than was necessary in Mrs. Cannon's case.

The Carrier, therefore, holds that there has been no violation of Rule 29 in the case of Miss Newton and her claim is, therefore, without merit, and request that your Board so hold.

OPINION OF BOARD: Claimant held the position of Roundhouse Clerk at Appleyard, Washington. On Saturday, March 31, 1945, and Saturdays subsequent thereto, Claimant was required to work without additional compensation therefor. The claim is for four hours at the time and one-half rate for each Saturday afternoon worked.

The claim is founded on Rule 29, current Agreement, which provides:

"Where, in a given office, it has been the practice to let employees off for a part of the eight (8) hour day on certain days of the week, such practice shall not be rescinded and shall not be departed from except in cases of emergency."

When the practice of permitting Saturday afternoons off is established, the rulings of this Board have been consistent in holding that an employee required to work on Saturday afternoon is entitled to pay therefor at the time and one-half rate, except where the work done was the result of an emergency. Awards 2040, 2073, 2349, 2460 and 2721. In the present case the Claimant is entitled to an affirmative award if the practice of permitting Saturday afternoons off is established. If the proof fails in this respect, the claim must be denied. There is no question of emergency work involved.

The Organization produced the following evidence in support of the claimed practice: Lyle McKnight, the occupant of the position from February 10, 1936 to November 27, 1936, states that he always had Saturday afternoons off during the period he held the position. W. A. Swan who worked as Clerk at Appleyard Roundhouse from November 25, 1936 to December 4, 1940, states that he had Saturday afternoons off while he was there. Lloyd D. Boyles who worked at this point from January 8, 1941 to August 20, 1942, states that he usually had Saturday afternoons off but admits working Saturday afternoons on one or two occasions. Three clerks in the Stores Department state that the custom at Appleyard was to have Saturday afternoons off but they admit that the basis of their conclusion was general observation only. Their evidence is not of much weight in determining the issue.

The evidence of the Carrier is substantially as follows: William Coleman, who was Roundhouse Foreman at Appleyard from March 1, 1929 to January 16, 1943, states that Roundhouse Clerks were permitted to be off on Saturday afternoons provided their work was cleaned up by one or two o'clock, that no regular quitting time was established for Saturday afternoon, and that leaving early on Saturday was dependent upon special conditions and granted only if their work was done. A. P. Ford, who was Round-

house Foreman from January 16, 1943 to date of the claim, states the situation to be as recited by Coleman. He says further that Claimant is a slow worker and has never had her work up which resulted in her working on Saturday afternoons. Lillie M. Cannon, who worked the position from February 1, 1923 to October 14, 1931, and from August 28, 1942 to March 5, 1945, states that time off on Saturday afternoons was not understood by her to be the practice at Appleyard during all the years she worked there. She says time off on Saturday afternoons was contingent on the work of the position being completed and the permission of the foreman being obtained.

The burden of showing the existence of the practice is upon the party asserting it. We do not think the Claimant has sustained that burden by a preponderance of the evidence. The evidence is so conflicting between witnesses who are in position to know that we cannot say with any certainty that the practice existed. The fact that the witnesses are in such disagreement is of itself some evidence that the alleged general practice did not exist. We hold, therefore, that the evidence is insufficient to sustain a finding that it was the practice at Appleyard to permit full Saturday afternoons off. This award does not determine that a general practice did not exist at this point with reference to working less than eight hours on Saturday.

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 a violation of the Agreement is not shown.

AWARD

Claim denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.