

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, 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 on or about Feb. 9, 1946, the position known as Steno-Clerk was established at the Diesel Shop at Havre, Montana, and required the assignee thereof to work overtime on Saturday afternoon, failing to properly compensate said employe at the time and one-half rate.
2. That said employe and each one thereafter be compensated for the first Saturday after about Feb. 9, 1946, and each and every Saturday afternoon thereafter they were required to work at the time and one-half rate.

JOINT STATEMENT OF FACTS: About Feb. 9, 1946, a new position known as Steno-Clerk was established in the Diesel Shop at Havre, Mont., which shop had just been put into operation and the position established was the first of its kind in this particular Diesel Shop. A rate of pay was established for the position in conformity with Rule 49 of the Agreement between the Organization and the Carrier, the rate being based in conformity with the wages of position of similar kind or class in the Seniority District where created.

After the establishing of this position, the Carrier insisted the employe be required to work Saturday afternoon and was not paid overtime. The Employees contended the rate was established in conformity with wages or positions of similar kind or class in the Seniority District and inasmuch as other employes were granted Saturday afternoon off. Such protest was based on the contention that the hours of service and working conditions should be the same as other Clerical and Stenographic positions in other offices and departments in this locality.

POSITION OF EMPLOYES: Rules 29, 36, 37, 38, 40 and 49 of the current Agreement between this Carrier and the Brotherhood of Railway and Steamship Clerks which are the controlling Rules in this case, read as follows:

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to let employes off for a part of the eight (8) hour day on certain days of the week, such practice shall not be rescinded and shall not be departed from except in cases of emergency.

(See Joint Statement of Facts), to which request it is, of course, not within your jurisdiction to accede.

The Carrier holds, therefore, that your Board has no option in this case other than deny the claim of the employees.

OPINION OF BOARD: This claim is filed by the Organization, in behalf of the occupant of the position of Steno-Clerk, in the Diesel Shop of the Carrier, at Havre, Montana, a new position established February 9, 1946, and the only position of like character existing in said shop, or in that seniority district. The claim is that said occupant should be paid for all work performed on Saturday afternoons, on a time and one-half basis, from the date the said position was established. The claim is based, primarily, if not entirely, on Rule 29 of the controlling Agreement, which reads as follows:

"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."

It is admitted by all parties to this dispute, that no emergency situations are involved in this case.

The position here involved, and the Wage Scale application thereto, were established by Agreement under the provisions of Rule 49 of the Agreement, which reads:

"The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created.

When there is no position of similar kind or class in the seniority district where the new position is created, the rate of pay for such position will be fixed by negotiation between Management and the duly accredited representatives of the employees."

Rule 28 of the Agreement provides:

"Except as provided in Rules 29, 30, and 31 eight (8) consecutive hours, exclusive of meal period, shall constitute a day's work."

Rules 30 and 31 above referred to do not have any bearing upon this dispute.

The position, out of which this controversy arises, was bulletined on January 30, 1946, in the following language:

"Bids will now be considered for position of Steno-Clerk, Diesel Shop at Havre, Montana. Assignment 8 A. M. to 5 P. M., six days per week, Sunday day of rest, rate \$6.76 per day, lunch hour 12 noon to 1 P. M. This position will compile all reports and handle correspondence in connection with diesel locomotives at Havre. Applicant must be qualified stenographer."

The position bulletined was bid for and assigned, after which, in August, 1946, the petitioner made a claim, on behalf of the assignee, for an adjustment of the rate of pay therefor. Considerable correspondence passed between the General Chairman and a Carrier official, and a settlement was reached on December 27, 1946, by which the rate of pay was fixed at \$8.57 per day, retroactive to February 9, 1946. No question was raised in said correspondence in respect to Saturday afternoon work.

In said correspondence, however, the rate of pay of other positions in that district, assumed to be of the same general nature, was discussed; and a position in a Diesel Shop on the Spokane Division, in a different seniority district, was referred to. In all the offices where the positions discussed or referred to existed, it was the practice to release employees on Saturday afternoons, except in cases of emergency, in accordance with Rule 29; and petitioner says it was assumed by it that the same practice would apply to the newly created position, and this seems to constitute the substance of its claim.

As between employees working in that district, and engaging in work substantially similar in nature, the claim possesses elements of fairness

which this Board, were it permitted to do so, would be inclined to consider. But we are here confronted with a case which does not admit of such consideration. In the first place, we are met with the basic day rule, and the terms of the bulletin quoted above. These, however, do not create an insuperable obstacle to the allowance of the claim, as we think it may reasonably be said that Rule 29 should be construed as being applicable, and as a limitation or modification thereof. But Rule 29, on which petitioner must rely, in itself, bars the claim. The "practice" relied on must have existed in a "given office." Admittedly, there could not have existed any such position in the Diesel Shop at Havre, because before February 9, 1946, no such position or office had been in existence in said shop, or in that seniority district. We cannot go outside of the Agreement to find an excuse for sustaining the claim, nor change the Agreement to effect that purpose. The importance of adhering to Agreements has been many times stressed in the Awards of this Division. Any departure therefrom, in this case, would serve as a precedent for deviations from Agreements in the future. Rule 29 of the Agreement is clear and unambiguous, and does not lend itself to any construction, on the basis of matters extraneous thereto, or otherwise. We can do no other than adhere to its plain terms, and, therefore, the claim must be denied.

We are supported in our conclusion by Award No. 3561 of this Division, in a case arising on the line of this Carrier, and in which Rule 29, of the Agreement here involved, was considered. We there said:

"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." And later, in the same Award, we said:

"The burden of showing the existence of the practice is upon the party asserting it."

In that case the Claimant failed to sustain that burden and the claim was denied.

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 there has been no violation of the Agreement.

AWARD

Claim (1 and 2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1948.