

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**

NORTHERN PACIFIC RAILWAY COMPANY

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

(1) The regular four and one-half hour Sunday assignments of day ticket clerk position at Auburn, Washington, is violative of the provisions and intent of the current agreement between the parties, and

(2) That Mr. H. E. March, Ticket Clerk, therefore, be paid eight (8) hours at the rate of time and one-half for all Sunday and Holiday service performed by him from January 5 to May 4, 1947, inclusive, within the spread of his regular work day assignment.

EMPLOYEES' STATEMENT OF FACTS: Mr. H. E. March is a regularly assigned ticket clerk at Auburn, Washington, whose assignment is from 1 P.M. to 10 P.M. daily, Monday to Saturday, with one hour for lunch and with Sunday as his assigned day of rest. The rate of his position is \$8.69 per day, and his assigned duties from Monday to Saturday are as follows:

- Sell train and pullman tickets
- Answer telephones
- Make reservations for train and pullman tickets
- Make Northern Pacific forward abstracts
- Make and handle heater bills and all reports
- Check and deliver baggage
- Make daily and monthly ticket reports
- Keep ticket stock up-to-date
- Maintain passenger tariff files
- Deliver pay checks after cashier and chief clerk are off duty
- Make monthly comparative baggage and ticket reports

On Sundays and holidays he is regularly assigned from 6 P.M. to 10:30 P.M., a total of four hours and thirty minutes, for which he is compensated on the actual minute basis at the rate of time and one-half. His duties on such days are as follows:

Auburn Station

- Sell rail and pullman tickets
- Check and deliver baggage
- Answer Telephones and give out train information
- Make reservations for train and pullman tickets

East Auburn Station

- Transfer mail, baggage and express on Train No. 2.

change produces the same result. The Employees were unsuccessful in securing a change in the rule by negotiation. They are now attempting to secure such change through this Board. This Board has no jurisdiction under the Railway Labor Act to change or modify existing agreements.

The claim covered by this docket should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is a regularly assigned ticket clerk at Auburn, Washington, working 1 P. M. to 10 P. M., Monday through Saturday, with one hour off for lunch. Sunday is assigned as his rest day. On Sundays, commencing with January 5, 1947, Claimant was directed to work from 6 P. M. to 10:30 P. M., for which he was paid at the time and one-half rate. It is the contention of the Organization that the work performed on Sundays was substantially the same as that performed on the Monday through Saturday assignment and, the position being a seven-day-week job, it must be filled by an eight hour assignment on Sunday. In other words, it is contended that the Call Rule has no application to this Sunday work and that Carrier violated the Agreement when it applied that rule.

The position occupied by Claimant consists of selling tickets, checking baggage, making reports, preparing forwarded abstracts, answering telephones and freight bill expensing. On the Sundays here involved, Claimant sold tickets, checked baggage and answered the telephone. He was required also to transfer mail, baggage and express on Train No. 2 at East Auburn on Sundays. This latter work was performed during week days by a regular assigned transfer clerk working 3 P. M. to 11 P. M., Monday through Saturday, with Sunday his assigned rest day.

We think the record shows that the duties assigned to Claimant on his regular assignment existed also on Sunday. They were clearly necessary to the continuous operation of the railroad. Certainly the selling of tickets, the handling of baggage and express, and the giving of train information by telephone is such a position when trains are operating seven days a week. While it is true that all clerical positions charged with selling tickets and handling baggage are not necessary to the continuous operation of the Carrier, the one here involved was. Whether it is such a position is determinable from the duties performed and the necessity that they be performed seven days each week. The fact that the Carrier may have assigned the position for six days only does not change the fact. This conclusion finds support in Awards 3054, 3101, 3886.

It has been repeatedly determined by this Division that a position necessary to the continuous operation of the Carrier must be filled seven days a week, 365 days a year. Such a position may not properly be assigned for six days, Monday through Saturday, and have the Sunday work of the position performed under the Call Rule. The position must be filled on the seventh day and when filled by the regular occupant of the position on his rest day, he is entitled to pay for so doing at the time and one-half rate.

The Carrier asserts that it has been a long continued practice on this railroad to apply the Call Rule to factual situations similar to the one before us. There is also brought into the case the effect of a letter written on May 1, 1923, by the General Chairman to the Carrier's General Manager. The effect of the negotiation of a new Agreement effective June 1, 1946, also was brought into the picture. The foregoing matters were carefully considered and discussed in Award 3891. We reaffirm the reasoning of the Opinion and the conclusion reached in that award as it relates to them. We do not deem it necessary to further discuss those matters here.

Awards 3793, 3842 and 3843 are pointed out to us as controlling this discussion. Each of those awards involve positions which were not necessary to the continuous operation of the railroad.

We conclude that Claimant is entitled to be paid for eight hours' service at the time and one-half rate for each Sunday and holiday worked between January 5 and May 4, 1947.

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 the Agreement was violated.

AWARD

Claim sustained as shown in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.