

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Francis J. Robertson, Referee

**PARTIES TO DISPUTE:**

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

**CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Chicago, Rock Island and Pacific Railroad, that

(1) Mary Cardwell, Messenger in the Relay Office, Telegraph Department, Little Rock, Arkansas, be paid time and one-half for 1½ hours each Saturday afternoon, effective November 23, 1946;

(2) All employees who have worked as Messenger since November 23, 1946, be paid in accordance with claim No. 1;

(3) In accordance with Rule 76 that the practice of granting Saturday afternoon off at 1:00 P. M. be extended to this position of Messenger.

**EMPLOYES' STATEMENT OF FACTS:** There is in evidence, an Agreement between the parties to this dispute, bearing effective date of August 2, 1945.

On or about November 20, 1946, Mr. Oscar Johnson, Assistant to Mr. C. O. Ellis, Superintendent Communications, was in Little Rock, Arkansas, investigating this claim, and at that time he issued definite instructions to the Messenger and the Wire Chief that effective at once the Messenger would be required to work until 5:00 P. M. on Saturdays. Prior to those instructions, the Messenger had been relieved on Saturday afternoon at 3:00 or 3:30 P. M.

September 21, 1946, the Messenger addressed a joint letter to Mr. L. M. Tucker, Chief Dispatcher; Mr. A. L. Talkington, Asst. Freight Traffic Manager; Mr. F. W. Duttlinger, Division Passenger Agent; Mr. J. P. Moore, Depot Ticket Agent; and Mr. C. G. Adams, Division Superintendent, with carbon copy to Mr. P. J. Kelly, Wire Chief who is in charge of the Relay Office at Little Rock, the letter reading as follows:

"I would like to handle with the company with the view of getting off on Saturday afternoon after 1:00 P. M. providing it is agreeable with you gentlemen.

Will you please advise if it will be satisfactory with you for me to make the last pickup and delivery of wire messages at 1:00 P. M. on Saturday.

I would appreciate this very much if this would not cause you any inconvenience."

Chief reappraised the situation and determined the work to be performed and the traffic which might be delayed by permitting the messenger to be off on Saturday afternoons, he reversed his original conclusion and determined that Mrs. Cardwell should work until the regular quitting time.

Even if those who were addressed by Mrs. Cardwell in her letter of September 21, 1946 may have indicated that they had no objection to her being absent on Saturday afternoons, that has no bearing whatsoever on this case. Neither does it have a bearing on whether or not it is possible to extend the practice. There certainly are duties for the messenger to perform other than the delivering of messages to the offices in that vicinity. Subsequent to September, 1946, the Superintendent's office at Little Rock insisted that it must have messenger service from the Relay office on Saturday afternoons. Conditions are not such as warrant an extension of the practice of Saturday afternoon relief to include the position of messenger in the Relay office at Little Rock.

The history of Rule 76 of the controlling agreement was delineated to your Board in Docket CL-937 resulting in Award 944. In connection with the agreement of January 1, 1931, which has been superseded by the agreement of August 2, 1945, the record in that docket will show the carrier issued instructions to all concerned with reference to Rule 76 and as a part of those instructions, it included the following language:

"It is felt that no extension of the privileges should be granted without the approval of the department head \* \* \*."

Rule 46 of the controlling agreement provides that:

"Eight (8) consecutive hours, exclusive of the meal period shall constitute a day's work \* \* \*."

The consent of the head of the department, i.e., the Superintendent of Communications, was not given to the request of Mrs. Cardwell that she be afforded Saturday afternoon relief. Investigation by the Superintendent of Communications and his subordinates developed that eight (8) hours' work was required in accordance with Rule 46 on Saturdays and that to permit the incumbent of the position of messenger to absent herself on Saturday afternoons would be to add additional burdens to the Wire Chief and Telegrapher which unquestionably would result in delays in the traffic they handle or in other details of their work being neglected so that they could deliver messages and perform the work assigned to the messenger. These facts coupled with the assignment of work which the messenger had for Saturday afternoons, exclusive of the delivering of messages to the offices addressed by her in her communication of September 21, 1946, did not and do not now justify extending a practice of Saturday afternoon relief to the messenger position in the Relay office at Little Rock.

We respectfully petition your Board to deny the claim.

**OPINION OF BOARD:** As appears from the statement of claim, this case is brought by the System Committee of the Brotherhood on behalf of Mary Cardwell, Messenger in the Little Rock, Arkansas, Relay Office of the Carrier for Saturday afternoon relief and compensation at time and one-half for one and one-half hours each Saturday afternoon effective November 23, 1946. Employees rely on Rule 76 of the Agreement between the parties effective August 2, 1945, which rule reads as follows:

"**SICK LEAVE AND SATURDAY AFTERNOONS.** The present practice of allowing time to employees off account sickness and Saturday afternoon relief will remain in effect, and where conditions justify the practice will be extended."

Weighing the contentions of both parties and on the basis of the facts set forth in the entire record in this Docket, it is apparent that there was no established practice of granting Saturday afternoons off at 1:00 P. M. to the incumbent of the position of Messenger in the Relay Office, Telegraph Department, Little Rock, Arkansas. That some arrangement was existent under

which Mrs. Cardwell, the incumbent of the position of messenger was permitted on occasion to leave at 3:30 P. M. prior to November 20, 1946, is also apparent. For how long a period of time this arrangement was in effect is not quite so clear. Carrier indicates that the arrangement was started sometime in August of 1946 and further asserts that it was not a regular occurrence to grant time off from 3:30 P. M. on each Saturday from that date to November 20, 1946. Employees do not assert any specific date upon which this arrangement first became effective, but do assert that Mrs. Cardwell, the claimant, was granted time off at 3:30 P. M. on each Saturday afternoon until stopped on November 20, 1946.

Carrier argues that there was not on the day this claim originated, nor is there now, a practice in effect in any Relay Office on the property where messengers are granted Saturday afternoon relief, and therefore, there is no practice "to be extended." We think it is quite clear from the contention of this same Carrier appearing in the record in Award No. 944 that the intent of the parties in negotiating this Rule was to extend the practice of granting Saturday afternoon off to offices and stations where such time off was not granted previously if conditions justify such extension. Hence, it would not be necessary to establish that there was or is a practice of granting Saturday afternoon off to messengers in Little Rock and other Relay Offices in order to have the practice extended to cover the messenger position at Little Rock, if conditions justified the extension.

We have grave doubts that the arrangement of granting time off at 3:30 P. M. on Saturdays to Mrs. Cardwell was continued either with sufficient regularity or over a sufficiently extensive period of time to constitute a practice. Accordingly, we do not view this case from the standpoint of whether the Carrier had discontinued a practice of granting time off to the incumbent of the involved position on Saturdays at 3:30 P. M., but do view it from the standpoint of deciding whether or not conditions at the Station justified the extension of the practice allowing Saturday afternoon relief either at 1:00 P. M. or 3:30 P. M. That we may do so, is clearly apparent from the reasoning of Award No. 944.

Did conditions justify the allowance of time off on Saturday afternoon to the messenger position at Little Rock? In establishing the affirmative of this question, we believe that the Employees have the burden. Carrier maintains that conditions within the Relay Office are controlling, and for reasons which it had already recited, that the establishment of a practice in the Relay Office where the messenger is permitted to absent herself on Saturday afternoons is not justifiable. In this connection, we note that Mrs. Cardwell on September 1, 1946, wrote the Chief Dispatcher, Assistant Freight Agent, Traffic Manager, Division Passenger Agent and Division Superintendent saying that she would like to handle with them getting off at 1:00 P. M. on Saturdays. Upon receiving replies indicating no objection by said persons, P. J. Kelly, then Wire Chief and in charge of the Relay Office, wrote to the Superintendent of Communications saying, "I see no objection to our agreeing to allowing our messenger here to be excused from duty each Saturday after 1:00 P. M. Mr. Blevens and I will keep a close scrutiny of all business that may come to us after 1:00 P. M. Saturday and anything that in our opinion should be given preferred handling, we will do so by 'phone." Mr. Blevins, to who reference is made in that letter, was Night Wire Chief. No reply to that letter appears in the record, but in any event on November 20, 1946, the Assistant to the Communications Superintendent visited the Little Rock Office and issued instructions to the Messenger and the Wire Chief that effective at once the Messenger would be required to work until 5:00 P. M. on Saturdays. In our opinion, although entitled to some consideration, not too much weight can be given to views of the individuals to whom Mrs. Cardwell directed her letter of September 1. Blevins and Kelly are the ones who had more knowledge of the needs of the Relay Office than all of the other five. It appears from the Carrier's Statement of Facts that Blevins, the Night Wire Chief, advised Mr. Kelly on September 1, 1946, that arrangements could not be made to release Mrs. Cardwell at 12:00 noon on Saturdays because of the volume of work to be handled due to the fact

that neither he nor the telegrapher had time to do the work required of the messenger. Later on in its submission, the Carrier asserts that because of Blevins' opposition to Mrs. Cardwell's request the Manager Wire Chief on reconsideration advised Mrs. Cardwell that she would be obliged to work on Saturday afternoons until 5:00 P.M. This latter assertion of the Carrier is refuted by the fact that it was the Assistant of the Superintendent of Communications who gave that order and the further fact that it is established that it was Blevins (the Night Wire Chief) who arranged and instructed Mrs. Cardwell that she could get off on Saturday afternoons around 3:30 P.M. Blevins may have objected to an earlier quitting time for the Messenger as stated by the Carrier, but we believe the record bears out the contention that the local people and supervisors in the Relay Office were agreeable to the 3:30 P.M. quitting time for the Messenger. We believe that the record on the whole establishes that conditions at Little Rock Relay Office justified the extension of the practice of allowing Saturday afternoon relief at 3:30 P.M. to the Messenger position. We do not believe that the Employees have borne the burden of establishing that conditions justified the extension of the practice of allowing Saturday afternoon relief at 1:00 P.M. Accordingly, we sustain claims 1 and 2. As to claim 3, we sustain to the extent of allowing Saturday afternoon relief at 3:30 P.M.

**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 Carrier violated the Agreement.

#### AWARD

Claims 1 and 2 sustained, claim 3 allowed but only to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.