

Award No. 5631

Docket No. CL-5649

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, 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 effective 12:01 A.M., September 1, 1949, it changed the number of hours constituting the basic day of PBX Operators at Superior, Wisconsin, from seven to eight hours per day.
2. That all employees affected by such violation (names of the employees have been furnished the Carrier) be compensated for one hour at the overtime rate for each and every day required to work in excess of seven hours, retroactive to September 1, 1949 and continuing until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: For many years these employees have been working seven hour assignments. These hours were agreed upon between the Carrier and a representative of our Organization on or about March 30, 1946. This agreement was made at that time to comply with the Wisconsin law which provided for the number of hours that women could work in any week. The arrangement was made particularly to allow the Carrier to work these employees seven days a week. We are submitting Exhibits "A" and "B" to confirm this agreement.

On September 1, 1949 when the forty hour week was inaugurated, the Superintendent at Superior ordered these employees to work eight hours a day.

POSITION OF EMPLOYES: In March, 1946, our Division Chairman, Mr. E. J. Ovesen at Superior, was requested by the Carrier to agree to certain hours for the PBX Operators at Superior, and on March 29, 1946 he wrote the Superintendent confirming a conference he had with him (See Exhibit "A"). You will notice that they were also agreeing that these employees would work without a lunch period which set aside certain rules of our agreement providing for regular lunch periods.

On March 30, 1946, Mr. C. O. Hooker, Superintendent, put out instructions to the supervisory officials at Superior, confirming this conference and assigning these employees to a seven-hour day (See Exhibit "B"). He stated very clearly that they would work without a lunch period. You will notice

seven-hour day or a 35-hour week. To now give to these claimants a seven-hour day and a 35-hour week would be writing a new rule into the present agreement that was never intended nor contemplated by the parties or by the 40-Hour Week Agreement. To do so would be a violation of present rules. The Carrier has observed the rules of this agreement. It followed the rules of the agreement, and did on September 1, 1949, just what Rule 29(a) provides:

"This Carrier will establish, effective September 1, 1949, for all employees subject to this agreement, a work week of forty (40) hours consisting of five days of eight (8) hours each, with two consecutive days off in each seven."

The Carrier complied with the rules, and there is, therefore, neither equity nor merit in the claim of the Employees, which, can only be construed in one of two ways: either as a request to violate an existing rule, or write a new one. The first of these alternatives your Board cannot condone and the second you are specifically without authority to do. The Carrier, therefore, holds that in such circumstances your Board must deny the claim of the Employees.

It is hereby affirmed that all data herein submitted in support of Carrier's position has been submitted in substance to the Employee Representatives and made a part of the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: This case presents questions with respect to the application of amendments of a collective bargaining Agreement occasioned by the Forty Hour Work Week Agreement and a Special Letter Agreement relating to hours of work and meal periods.

The employees involved are PBX operators and they are subject to a Wisconsin law which fixes a maximum of 50 hours of work per week for women.

The collective bargaining Agreement provides a "Basic Day" of 8 consecutive hours exclusive of meal period; and meal periods of not less than 30 minutes nor more than one hour between the ending of the fourth hour and the beginning of the seventh hour after starting work, unless otherwise agreed upon by the Local Chairman and the proper supervising officer.

During the war the Wisconsin Industrial Commission relaxed the law to permit these PBX operators to work seven 8-hour days or a 56-hour week; and this they did from June 16, 1943 to March 30, 1946. Upon the renewed application of the Wisconsin law after the war, and for the purpose of obeying the law, the Local Chairman and the proper supervising officer of the Carrier agreed upon a 7-hour day without meal period for these PBX operators at Superior. This Special Agreement was confirmed in writing and became effective April 1, 1946 whereupon these employees worked 7 hours per day without meal period 7 days per week with time and one-half for Sundays.

When the Forty Hour Work Week amendments of the collective bargaining Agreement became effective on September 1, 1949, the Carrier treated the Special Letter Agreement as superseded and the PBX operators have since been assigned to a 40 hour week of 8 hours per day with meal period.

Both before and after the Forty Hour Work Week amendments the collective bargaining Agreement has provided a basic day of 8 consecutive hours with meal period and overtime at the rate of time and one-half for "time on duty in excess of 8 hours."

The claim is for one hour at the overtime rate for each day required to be worked in excess of 7 hours since September 1, 1949.

FIRST. The only purpose of the Special Letter Agreement was to comply with the Wisconsin law. In other localities in Wisconsin compliance was achieved by providing relief and by leaving the daily hours at 8 with meal periods; but this was apparently not feasible at Superior by reason of the want of qualified personnel and by reason of the requirements of the Rules with respect to relief. The operation therefore required weekly service in excess of the maximum fixed by the Wisconsin law unless the basic 8-hour day was decreased. Hence the Special Letter Agreement.

The salient features of the Special Letter Agreement involved give-and-take: **first**, no relief; **second**, no meal period; and **third**, a 7 instead of an 8-hour day.

SECOND. The adoption of the Forty Hour Work Week Amendments of the collective bargaining Agreement put an end to the purpose for which the Special Letter Agreement had been adopted. The Carrier came under a general obligation to establish a 5-day week and to provide relief. No longer was any special exception to the Agreement necessary, for compliance with the Wisconsin law was now possible under the terms of the amended Agreement itself. The purpose for which the Special Letter Agreement had been adopted having ceased to exist on September 1, 1949, the Carrier applied the terms of the amended collective bargaining Agreement and put the PBX operators on an 8-hour 5-day week with relief and meal periods.

THIRD. While the Special Letter Agreement was a three-fold give-and-take bargain, the claim presented here calls for a 7-hour day with meal periods and 2 days regular weekly relief. This is to cull the disadvantages out of both bargains—the Special Letter Agreement and the Forty Hour Week amendments—and to ask only for the advantages of each.

If the claim were bottomed on the Special Letter Agreement in its entirety, a question would be presented whether the Forty Hour Work Week amendments or the Special Letter Agreement control, for both cannot be still effective. Unless we are to write a new agreement for the parties, a

tenable claim must be bottomed on one bargain or the other and not, as this one is, upon selections from both. In this posture, the claim should be 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 the Special Letter Agreement is either still effective as an entirety or it was entirely superseded by the Forty Hour Work Week amendments of the collective bargaining Agreement. To sustain the claim as presented would be to alter one or the other of these Agreements.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1952.