

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, on May 14, 1951 the Carrier changed the assignment of three men working on the 11:50 P.M. to 7:50 A.M. shift at Great Falls, Montana freighthouse, and assigned them with a starting time of 12:00 Midnight for the purpose of avoiding overtime.
2. That the Carrier now be required to compensate Alee Moore, Mark Teague, Robert L. Richardson and others who may have held the jobs since that date, for eight hours at the overtime rate for each and every Monday thereafter that they were required to work.

EMPLOYEES' STATEMENT OF FACTS: At the time the forty hour week was put into effect the warehouse force at Great Falls was assigned as follows:

8 A. M. to 4 P. M.	4 P. M. to 12 MN.	12 MN to 8 A. M.
1 Foreman	1 Asst. Foreman	1 Asst. Foreman
4 checkers	2 checkers	3 checker-L.T. Oprs.
3 checker-lift trk oprs.	3 checker-L.T. Oprs.	4 stowers
2 callers	2 callers	4 truckers
3 stowers	3 stowers	
7 truckers	10 truckers	

The Carrier decided after September 1, 1949, to continue the 12 Midnight to 8:00 A. M. shift on a six-day basis in order to have crew on hand Mondays and Saturdays. This resulted in payment of overtime rates for Saturday shift. A short time later the officials at Great Falls called our Committee into a conference for the purpose of providing some solution for elimination of overtime payments for Midnight crew on Saturdays. Our Organization was represented by the Division Chairman and a local representative. The requirements for a five-day position are that the days of rest should be Saturday and Sunday. The Carrier's committee desired to

made abundantly clear by its repeated use of the expressions 'staggered work week,' 'in accordance with operational requirements,' and 'so far as practical.' The great variety of conditions met in the railroad system of the country and even varied conditions on a single railroad require flexibility on this matter. The tenor and substance of the Board's discussions and recommendations show definitely that the Board intended to permit the Carriers to stagger work weeks."

The 12 o'clock midnight to 8:00 A. M. shifts, subject of the controversy herein, was established in full accordance with the starting time rules to meet operational requirements, and in Award 5581 of your Board you state:

"It is apparent that the Carrier in the first instance should be the judge of its operational requirements. It necessarily follows that under the 40-Hour Week Agreement discretion with respect to staggering work weeks of forces engaged in work of a nature requiring six or seven day protection rests with the Carrier."

The Employees contend that the 12 midnight to 8:00 A. M. shift was established "for the purpose of avoiding overtime." Attention is directed to the statement made by your Board in Award 5912, wherein you state:

"The purpose of the forty hour week was not to give employees the same amount of work with considerable more overtime pay. Rather, it was for the reduction in number of hours worked per week without a loss in net earnings to the employee."

Furthermore, in Award 6075, you state:

"After a careful study of the Forty Hour Week Agreement we cannot find any intention of the parties that, as a condition precedent to staggering work weeks as contemplated under Rule 20-2(a) General (identical with Rule 29(a) heretofore quoted), relief positions must be established. One is not conditional on the other according to the language of the Rule." (Parenthetical insertion ours.)

The Carrier, therefore, holds that the shift arrangement established in the Great Falls freighthouse, subject of the claim herein, is not in violation of any rule in the agreement between the parties involved herein and that the establishment of such shifts is in strict conformity with the language and intent of the Forty Hour Week Agreement and interpretations thereof set forth by your Board and that, therefore, the claim herein must be denied.

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.

OPINION OF BOARD: On May 14, 1951, Carrier had three shifts working around the clock five days each week, Monday through Friday, at its Great Falls, Montana, freight house, the starting times of the three shifts being 8:00 A. M., 3:50 P. M., and 11:50 P. M. No question is raised concerning the correctness of the starting times of these three shifts. On the aforesaid date, Carrier assigned a fourth shift five days each week, Monday through Friday, Midnight to 8:00 A. M. The Organization contends that the fourth shift was improperly assigned for the purpose of avoiding overtime.

The rule governing starting time assignments provides in part:

(a) "Where three consecutive shifts are worked covering the twenty-four hour period, the starting time of each shift shall be between the hours of six and eight A. M., two and four P. M., and ten P. M., and midnight. Where other than three consecutive shifts are worked, no shift shall have a starting time between twelve

o'clock midnight and six A. M., unless mutually agreed between the Management and the duly accredited representatives of the employees.

(b) "Additional regular positions, other than three consecutive shifts, may have a starting time other than those specified in Section (a), except that no such position shall have a starting time between midnight and six A. M." Rule 35(a) and (b), current Agreement.

It is clearly proper for the Carrier to assign a fourth shift under the provisions of Rule 35(b) provided its starting time is not between midnight and six A. M. The assignment starting at midnight and ending at 8:00 A. M. was in compliance with this rule.

The Organization argues that the Carrier established the fourth assignment as it did to absorb overtime. The Carrier admits this to be true but asserts that it is authorized by the rules.

The dispute hinges on the fact that an assignment starting at 11:50 P. M., is an assignment as of the day it commences while a midnight to 8:00 A. M. is an assignment of the day following midnight. Award 737, Fourth Division; 1485, 1673, Second Division; 5442, 6161, Third Division. While it is true that the strict application of the foregoing rule requires that the third and fourth shifts work approximately the same hours four days in the week and at wholly different times on the fifth day, nevertheless, it is strictly in accordance with the starting time rules. It is conclusively presumed that the parties could properly make a fourth assignment within the limitations of Rule 35 (a) and that the results thereof were contemplated.

The argument of the Organization that the fourth shift assignment was in fact a third shift assignment is not a tenable one as long as Rule 35 (b) remains in effect. We think it is proper for the Carrier to avoid the payment of overtime in any way that it can as long as no rule provision is violated in so doing. No basis exists for an affirmative award.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of February, 1955.