

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

THE NORTHERN PACIFIC TERMINAL COMPANY OF OREGON

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that:

1. The Carrier violated the Clerks' Agreement when, on June 11 and 19, 1955, it did not properly compensate regular employees in the Mail and Baggage Department for a full eight (8) hours day when called in emergencies to fill vacancies caused by the absence of other regular employees.

2. (a) Mr. M. W. Arehart shall be compensated for an additional 45 minutes at the time and one-half rate of \$16.50 per day for filling vacancy on Truckman Job No. 18 on June 11, 1955.

(b) Mr. C. B. Shipley shall be compensated for an additional 1 hour and 36 minutes at the time and one-half rate of \$14.93 per day for filling vacancy on Truckman Job No. 28 on June 19, 1955.

EMPLOYEES' STATEMENT OF FACTS: (a) Claimant Arehart, at the time of the instant claim, was regularly assigned to Foreman Job No. 335, hours 5:00 A. M. to 1:00 P. M., rate of pay \$16.50 per day, with Saturday and Sunday as rest days. Mr. A. J. Buskala is the regular occupant of Truckman Job No. 18 in the Mail and Baggage Department, his assigned hours are 5:00 A. M. to 1:00 P. M., rate of pay \$14.93 per day.

At approximately 4:50 A. M. on Saturday, June 11, 1955, Mr. Buskala notified the board clerk he was unable to report for work that day due to illness. There were no extra employees available to work that morning and Claimant Arehart was called by the board clerk at 5:10 A. M. to fill the vacancy on Truckman Job No. 18. He responded, reporting for work at 5:45 A. M. and working until 1:00 P. M., and claimed eight hours' pay at time and one-half of the truckman rate for his services that day.

Clearly, the claims are without merit and same should be denied, and the Carrier so requests. To sustain them would write a new rule into the current agreement which would guarantee eight hours' pay to employees covered thereby for less than eight hours' work, regardless of the number of hours worked or the reasons why only those hours were worked. Needless to say, the Board is not empowered to do that.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were regularly assigned employees of the Mail and Baggage Department. Each was called to perform service on a position other than his own outside his assigned hours. Without fault of either party each claimant reported for work on his extra assignment some time after the starting time of the assignment. Each was paid at overtime rate for the time actually worked and each claims pay for the full eight hours of the position. There is no dispute as to the applicable rate.

The day on which Claimant Arehart was called to fill vacancy was one of his rest days, but Claimant Shipley was called to double over on one of his regular work days.

As to Claimant Shipley, Rule 37 (a) applies under the circumstances here involved and he was properly paid.

As to Claimant Arehart, who was called for the extra service on his rest day, the Forty-Hour Week Committee in resolving a dispute on this Carrier as to service on rest days, rendered the following decision:

Service rendered by an employe on his assigned rest day or days will be paid for under Rule 38, except when such employe is filling an assignment which is assigned to be worked or paid eight (8) hours on such day or days, in which case he will be paid a minimum of eight (8) hours at the overtime rate.

This provision was subsequently adopted by the parties hereto and made retroactive to September 1, 1949. As now before us, that rule must prevail. We think he was "filling" the assignment even though, without fault, he reported for service after the assigned starting time.

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 as specified in the Opinion.

AWARD

Claim (1) sustained in part and denied in part as shown by Opinion.

Claim (2-a) sustained. Claim (2-b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.