

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6117) that:

1. Carrier violated, and continues to violate, the Clerks' Rules Agreement at Miles City, Montana when it fails to properly compensate employe J. T. Butterbaugh for rest day relief service performed on Saturdays and Sundays.
2. Carrier shall compensate employe Butterbaugh for the difference between Yard Clerk rate of \$21.5184 per day and the Chief Clerk to Agent rate of pay \$22.7784 per day for Saturday, September 25th, and Sunday, September 26th, 1965; and for each Saturday thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 22, 1965, employe J. T. Butterbaugh was the occupant of Cashier Position 7471 at Miles City, Montana, at a rate of pay of \$22.5504 per day.

Position 7471 was abolished effective 5 PM September 22, 1965 and employe Butterbaugh then displaced employe D. B. Campbell on Relief Clerk Position at Miles City, Montana.

This relief clerk position relieves on Chief Clerk to Agent Position 7470 on Saturday and Sunday; Yard Clerk Position 7473 on Monday; and Yard Clerk Position 7474 on Tuesday and Wednesday.

The rate of pay of Position 7470 is \$22.7784 per day. The rate of pay of positions 7473 and 7474 is \$21.5184 per day.

Under the provisions of Article IV of the February 7, 1965 Agreement the Carrier was required to preserve to claimant Butterbaugh his rate of pay of \$22.5504 per day.

In lieu of paying claimant Butterbaugh his preserved daily rate of \$22.5504 on the three days he occupies the lower rated Yard Clerk Positions 7473 and 7474, and the higher \$22.7784 rate of Position 7470 on the two days he

The Organization has progressed the instant claim to your Board alleging that J. T. Butterbaugh is being compensated at the rate of \$21.5184 per day each Saturday and Sunday he relieves on Position No. 7470, instead of the established rate of \$22.7784.

OPINION OF BOARD: Claimant's Cashier position was abolished and he displaced a Relief Clerk on September 22, 1965. His rate as Cashier had been \$22.5504 per day. The Relief Clerk relieves Position 7470 on Saturday and Sunday; the rate for that position is \$22.7784. He also relieves on Monday, Tuesday and Wednesday on positions with a rate of \$21.5184.

Claim was made that Carrier was not paying the proper rate for the Saturday-Sunday position. Rule 17 provides that an employee receives his preserved rate when he works at a lower-rated position, but the rate of the position if it is higher-rated. The claim sought a difference between \$21.5184 and \$22.7784, although the employees' submission stated that Carrier was paying Claimant his preserved rate of \$22.5504 on all five days.

Carrier submitted evidence to show that Claimant had received the higher rate (\$22.7784) on Position 7470. The evidence consisted of four time records in July, 1966. According to the Employees, such evidence is inadmissible, since it was not produced during the discussion on the property. However, the records had been signed by Claimant, and they are therefore not barred from consideration by the Board. Evidence of this kind meets the requirements of Circular No. 1, since Claimant's signature does "affirmatively show the same to have been presented to the employee."

Although Carrier's Superintendent had originally replied to the claim by stating that Claimant was being paid "at the rate of \$22.5504 for all five days," the subsequent letter from Carrier dated February 14, 1966, advised the Employees that on Saturday and Sunday, when Claimant relieves on the higher-rated position, he does receive that position's rate of \$22.7784.

Carrier's letter added that Claimant receives less on other days, "and the \$22.5504 is the average daily rate, not the rate he actually receives each day." Nevertheless the claim submitted was a specific request for the difference between \$21.5184 and \$22.7784 for Saturdays and Sundays, and it did not seek a higher rate for the other three days.

Carrier has established that it paid the proper rate on Saturdays and Sundays, whether or not it paid the preserved rate for the rest of the week. The Board cannot revise the claim, however, in order to decide Claimant's proper rate when he worked the lower-rated positions, since no such claim has been submitted.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of April 1968.