NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

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

ST. JOHNS RIVER TERMINAL COMPANY

STATEMENT OF CLAIM.—

"Claim of J. S. Noble, depot master, Jacksonville, Florida, for pay for three hours on account of not being called to supervise the unloading of automobiles on Sunday, February 2, 1936."

STATEMENT OF FACTS.—While this case was jointly submitted, the parties were unable to agree upon a statement of facts. The employes stated the facts as follows:

"It is the regular assigned duty of Depot Master, Mr. Noble, to supervise the loading and unloading of automobiles in addition to his other supervisory duties at the Jacksonville Freight Station in the loading and unloading and checking of less car load freight during his six (6) day assignment each week.

"On Sunday, February 2, 1936, it was necessary to unload a number of automobiles, and the laborers, supervised by Mr. Noble during the other six days per week, were called and paid for the time worked in the unloading of these automobiles. Instead of calling Mr. Noble the Assistant Agent, Mr. Klein was used to supervise the unloading."

The carrier submitted the following statement of facts:

"On Sunday, February 2, 1936, three cars, containing four automobiles, which had moved into Jacksonville, Florida, on the ticket plan, were unloaded at that point by station laborers working under the supervision of the Assistant Agent.

"Mr. J. S. Noble, who is classified and carried on the pay rolls as depot master at Jacksonville, rate of pay, $6.02 per day, filed claim for pay for three hours under Rule 14 of Clerks' current agreement on account of not being called to supervise the work of unloading the automobiles. Rule 14 reads as follows:

" 'In making overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference.

" 'In making extra time on Sundays or Holidays, the above principle shall apply.'

"The claim was declined by the carrier on the ground that it was within its rights in having the work in question supervised by the Assistant Agent."

POSITION OF EMPLOYES.—That J. S. Noble, depot master, is regularly assigned to the duties of supervising colored freight handlers or laborers in the loading and unloading of less than carload freight and automobiles at the Jacksonville freight station, and that work performed by Assistant Agent Klein on Sunday, February 2, 1936, was work that rightfully belonged to Mr. Noble,

and he should be paid therefor under the provisions of Rules 11 and 14 of the agreement between the parties bearing effective date of September 1, 1926, reading:

"Rule 11, Employees called to perform work in advance of or not continuous with the regular work period on days of their regular assignment shall be allowed a minimum of three (3) hours at pro rata rate for two (2) hours or less, additional time calculated on minute basis pro rata. * * *"

"Rule 14. In making overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference.

"In making extra time on Sundays or Holidays, the above principle shall apply."

POSITION OF CARRIER.—The carrier states that the Jacksonville freight agency is not open on Sundays and holidays for the general transaction of business but on those days a skeleton force is maintained consisting of the rate clerk who is regularly assigned to work seven days per week, and the agent or assistant agent, or both of them, as may be necessary. On the Sunday in question it was necessary to unload four automobiles that had arrived at Jacksonville under the carrier's ticket plan for automobile transportation; that assistant agent Klein was assigned to duty on that date; that he is the immediate superior of depot master Noble; that his duties include supervision over Mr. Noble and his forces as well as clerical duties, and that it was within its rights and in accord with practice on its lines to require him to supervise the work of the platform laborers in the unloading of the automobiles. The carrier further asserts that the purpose of Rule 14, which in its present form was first included in the present agreement effective September 1, 1926, was to avoid partiality or discrimination on the part of local officers or employes in assigning overtime and Sunday and holiday work, and its purpose was to require only, where an overtime or a Snuday or holiday assignment was necessary, that the employe whose week-day duties embraced the work to be performed should be given the preference to it, and to prevent the favoring of certain employes to the exclusion or disadvantage of others.

OPINION OF BOARD.—It appears clear by the language of Rule 14 that it was the intention of the parties to the agreement to permit an employe regularly assigned to a class of work to have preference when overtime is necessary in performing such work. An employe regularly assigned to a class of work for which overtime is necessary should be permitted to perform all of that work, whether it be during his regularly assigned hours or before or after, if he so desires. The portion of the rule applying to extra time on Sundays and holidays provides that this principle shall apply, and the Board holds that the claimant in this case should have been given preference in performing the Sunday work that was part of his regular week day duties, just as was done in connection with the laborers who were called and whom he supervised on week days. Mr. Noble was not given preference in the performance of the Sunday work. Rather the work was assigned to the Assistant Agent who was on duty on that day.

The record shows that there was sufficient work of the nature that Mr. Noble usually performed on week days to be done on the day in question to warrant his being called. Therefore, the matter here is similar in fact to the situation in Award No. 60, National Railroad Adjustment Board, Third Division, and the result should be the same.

Attention is also called to the decision in Award No. 68, National Railroad Adjustment Board, Third Division, which is persuasive herein. Our conclusion is that Mr. Noble's claim should be sustained.

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 employe involved in this dispute are respectively carrier and employe 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 under the provisions of Rule 14, J. S. Noble should have been given preference in performing the work in question, Sunday, February 2, 1936, and this was not done. He should now be paid therefor under Rule 11.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1937.