

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

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

**THE DENVER & RIO GRANDE WESTERN
RAILROAD CO.**

Wilson McCarthy and Henry Swan, Trustees

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood that employes at Denver Freight Station, Denver; Pueblo and Grand Junction Yard Offices be paid time and one-half for all services performed on Sunday, or the seventh day, as provided by schedule rules, same to be retro-active to June 15th, 1936."

EMPLOYES' STATEMENT OF FACTS: "Certain employes at Denver Freight Station, Denver; Pueblo and Grand Junction Yard offices have been worked on Sunday, or the seventh day, and paid pro rata rate. The organization requested that they be paid time and one half in accordance with Rule 59, which request was denied by the Carrier. Rule 59 provides:

'Work performed on Sunday and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday), shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the carrier and who are regularly assigned to such service will be assigned one regular day off in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate.'"

CARRIER'S STATEMENT OF FACTS: "The occupants of all assigned clerical positions necessary to the continuous operation of the carrier at Denver (including Burnham) freight station, yard office and engine dispatcher's office; at Pueblo yard office and engine dispatcher's office, and at Grand Junction yard office work seven days per week and are paid at pro rata rates of pay for the seventh day's service in accordance with agreements of Oct. 16, 1926, May 24, 1927, and Apr. 17, 1929, which set aside the provisions of Rule 59 of the schedule agreement effective Feb. 1, 1926.

"The request that these employes be paid at time and one half rates of pay for the seventh day's service after June 15, 1936, was denied by the management."

regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate.'

"The modification of Rule 59 agreed to August 30, 1932, reads:

'The provisions of Rule 59 (Sunday and holiday work) shall be modified to the extent that at any point, or with any group of employes regularly assigned to seven days per week where there are three or less days relief work available per week, and a relief clerk cannot be provided for three or less days work per week, the regularly assigned occupants of the positions shall be paid pro rata instead of time and one-half rate for service performed on the seventh day during regularly assigned hours.'

"For the information of the Board will say that during discussion of this case with the organization representative he also requested that the modification of Rule 59 as agreed to August 30, 1932, be cancelled. However, this particular feature of the case is not included in the instant claim.

"The carrier contends when it granted the request of the organizations that the provisions of Rule 59 be suspended in its application to various jobs in various offices assigned to seven days per week, and agreed to permit the employes assigned to such positions to work Sundays and be paid therefor at straight time rates, it did so for all time and that the agreements in connection therewith were to become a part of the current clerks' agreement effective Feb. 1, 1926. To support its contention the carrier directs the attention of the Board to that part of the fourth paragraph of its letter of April 8, 1926, to Mr. Wm. N. Neff, who was then superintendent at Pueblo, which is a part of Exhibit 'A' covering the initial request submitted by the organization which reads in part:

'My understanding with General Chairman Ryan is that, if an arrangement of this kind is made, it applies to the position and not to the man, i. e., if he waives the right of the present occupants for the seventh day relief he is waiving the application of this rule to these positions for all time.'

and also that part of the organization's letter of Oct. 20, 1926, also a part of Exhibit 'A' which refers to our letter of Oct. 16, 1926, and which reads:

'This will advise that your letter fully covers our understanding of this matter and as such is accepted to become a part of the agreement.'

"The carrier further contends inasmuch as it was understood by it and acknowledged by the organization that these agreements were to become a part of the current agreement with the clerks' organization, this case has no place before your Board and that your Board has no jurisdiction in this dispute. If the organization desires to cancel these agreements or change any other rule in the existing working agreement there is a way to attempt to do so through the channels of the National Mediation Board."

OPINION OF BOARD: The record discloses that during January, 1926, and at subsequent periods, the petitioner requested the carrier to suspend the application of the provisions of Rule 59, at certain points. This was agreed to by the parties to apply at the points named in the claim.

The employes contend that the suspension, which was made at their request, was not permanent; while the carrier contends that it was intended to be permanent in nature. The record shows that a similar suspension was made at another point at the request of the employes and later cancelled by the carrier upon the request of the former. In the view of the Board the question of the permanency of the suspension was not definitely established by the forms of understanding which the parties had at the time. However,

in view of all the circumstances, the Board rules that the suspension involved be cancelled and that the terms of the agreement be made applicable at the points named in this dispute, effective within fifteen days from date of this award.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes 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 suspension at points involved in this dispute shall be cancelled within fifteen days from date of this award, and thereafter terms of the agreement shall be applicable at such points.

AWARD

The suspension, at the points involved in this dispute, shall be cancelled within fifteen days from the date of this award, and thereafter the terms of the agreement made applicable at such points.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of May, 1938.