

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

PORT TERMINAL RAILROAD ASSOCIATION

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Port Terminal Railroad Association that Freight Check Clerk, H. S. Deats, be paid the difference between the straight time rate and the time and one-half rate for all hours worked in excess of eight hours on March 30th, April 9th, April 17th, May 24th, August 6th, August 30th, September 4th, December 17th and December 30th, 1937 and January 6th, 1938."

EMPLOYEES' STATEMENT OF FACTS: "H. S. Deats, Freight Check Clerk, performed service on the dates as shown as follows:

March 30, 1937.—On duty at Southern Steamship Company from 7:00 A. M. until 3:00 P. M., released an hour for meal, 7 hours service. Released from 3:00 P. M. to 6:00 P. M. On duty again at 6:00 P. M. on Lykes boat working until 6:00 A. M., March 31st, with one hour release for meal, 11 hours service. Total number of hours on duty, 18. He was paid for this 18 hours of service—15 hours at straight time and 3 hours at the overtime rate. Claim was made for payment of 8 hours at straight time and 10 hours at the overtime rate.

April 9, 1937.—On duty at Southern Steamship Company from 7:00 A. M. to 11:30 A. M., 4½ hours service. Released 11:30 A. M. to 6:00 P. M. On duty again at Lykes Steamship Company at 6:00 P. M., April 9th, to 6:00 A. M., April 10th, with one hour release for meal, 11 hours service. For this 15½ hours of service, he was paid 12½ hours at the straight time rate and 3 hours at the overtime rate. Claim was made for payment 8 hours at straight time rate and 7½ hours at overtime rate.

April 17, 1937.—On duty at Southern Steamship Company from 7:00 A. M. to 12 Noon, 5 hours service. Released from 12 o'clock Noon to 7:00 P. M. On duty again at Lykes Steamship Company from 7:00 P. M. to 12 Midnight, 5 hours service. He was paid 10 hours at straight time. Claim was made for payment of 8 hours at straight time and 2 hours overtime.

May 24, 1937.—On duty at Southern Steamship Company from 7:00 A. M. to 2:30 P. M. with one hour release for meal, 6 hours and 30 minutes service. Released from 2:30 until 6:00 P. M. On duty again at Lykes Steamship Company from 6:00 P. M. to 6:00 A. M., May 25th, with one hour release for meal, 11

ice rendered by him at dock 4 was as a freight check clerk, while all the service rendered by him at dock 11 was as a supervisor. Dock 4 is on the southside of the Turning Basin and dock 11 is on the northside of the Turning Basin, and about one mile apart via the travelled route. It will be further noted that the lapse between tours of duty ranged from three to eight hours, except on August 30th and December 30th, when there was a lapse of one hour, and one hour and thirty minutes respectively.

"We submit that the time was properly allowed in accordance with the terms of the contract and that the claim is without merit and should be declined."

OPINION OF BOARD: The question to be decided by the Board is whether freight check clerks, whose service is intermittent, shall receive overtime after eight cumulative hours of actual work, when two or more tours of duty are worked on the same day, or shall be paid separately for each tour of duty with overtime accruing only when more than eight hours are worked on a single tour.

The employes contend that overtime begins when cumulative hours actually worked on one, two, or more tours of duty exceed eight; the carrier, on the other hand, that overtime begins only when time actually worked on a single tour of duty exceeds eight hours. The parties are not in dispute that total time to be paid for is that actually worked or held for duty as provided in Rule 3-(a).

Under Article 2, rates and basis of pay, Rule 3-(a) provides that the hourly basis of pay for freight check clerks for actual time worked or held for duty shall continue in effect and that time and one-half rate shall apply for actual time worked or held for duty in excess of eight hours.

Paragraph (b) of Rule 3 is the conversion rule, providing that employes formerly paid on a monthly basis shall thereafter be paid on a daily basis. Paragraph (c) of Rule 3 is the so-called guarantee rule, providing for six days' work per week (except in weeks in which holidays occur) for employes covered by the rule, with a note appended that Paragraph (c) does not apply to freight check clerks.

Under Article 4, overtime and calls, Rule 11-(a) provides that time in excess of eight hours exclusive of meal period on any day will be considered overtime and paid on the actual minute basis at time and one-half, except as may be otherwise provided in the rules. Other paragraphs of this rule are not pertinent to a determination of the issue here.

It is clear from the provisions of Rules 3-(a) and 11-(a) that check clerks are not excepted from the provisions of the overtime rule. Neither of these rules contains any provision that the Board deems sufficient to sustain the carrier's contentions that overtime for freight check clerks begins to accrue only after eight hours have been worked on a single tour of duty. In the light of the rules the Board holds that overtime for freight check clerks whose service is intermittent begins after eight cumulative hours, actually worked or held for duty, whether on one or more tours of duty, exclusive of meal periods, on any day, and for the purpose of applying this Award, the expression "on any day," is construed as making any tour of duty a part of that calendar day on which it begins, notwithstanding that it may not be completed until after the midnight hour.

Based on all the facts and circumstances of this particular case, not establishing a precedent with respect to retroactive payments, the Board is of the opinion that compensation should not be allowed prior to January 17, 1938.

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 overtime for freight check clerks whose service is intermittent shall begin after eight cumulative hours have been worked or held for duty, exclusive of meal periods, on any day, on one or more tours of duty, in accordance with the above Opinion.

AWARD

Claim sustained, in accordance with the above Opinion and Findings, from and after January 17, 1938.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1939.