

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

PARTIES TO DISPUTE:

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

THE DENVER AND RIO GRANDE WESTERN  
RAILROAD CO.

Wilson McCarthy and Henry Swan, Trustees.

**STATEMENT OF CLAIM:** "Claim of the employes that Messrs. Simister, Salisbury and Olson, stowers, Salt Lake City Freight Depot, for one hour's overtime for work performed March 28, 1936."

**JOINT STATEMENT OF FACTS:** "On March 28, 1936, Messrs. Simister, Salisbury and Olson, were called one hour in advance of the regular starting time of the day freight handling gangs for service as stowers. These employes commenced their tour of duty at 8:00 A. M., were released at 12:00 noon, returned at 2:00 P. M., and worked until 6:00 P. M."

"The Organization requested that they be paid one hour overtime at overtime rate, which request was refused by the Management."

**POSITION OF EMPLOYES:** "The Organization alleges violation of Rules 43, 46 and 55, which provide:

Rule 43—"Except as otherwise provided in this Article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work."

Rule 46—"Unless agreed to by a majority of employes in a department or subdivision thereof, the meal, period shall not be less than thirty (30) minutes nor more than one (1) hour."

Rule 55—"Employes will not be required to suspend work after starting any daily work period, for the purpose of absorbing overtime."

"The recognized meal period for the day freight handling force at Salt Lake Freight Station is from 12:00 Noon to 1:00 P. M., with the exception of one check clerk position which is assigned a meal period from 1:00 P. M. to 2:00 P. M. No agreement exists at Salt Lake Freight Platform which provides for a meal period in excess of one hour."

"These employes were not released at 12:00 Noon; when quitting work for the regular meal period they were instructed by the foreman to again report for duty at 2:00 P. M., thereby being assigned to a two hour meal period to avoid the penalty of overtime, as it was evident that their services would be required between the hours of 5:00 and 6:00 P. M."

"Seniority Roster of the Salt Lake Agent's district shows the following seniority dates of the three employes involved."

Jared Simister	—	August 24th, 1920
Wm. Salisbury	—	June 29th, 1921
Fritz Olson	—	July 1st, 1921

"Surely, employes with sixteen and seventeen years service and seniority cannot be construed as being engaged to take care of temporarily increased work which cannot be handled by the regular forces.

"Rule 44 is the only rule in the schedule which permits the working of a split shift under certain conditions; such conditions did not exist in this instance."

**POSITION OF CARRIER:** "As shown in the Joint Statement of Facts, Stowers Simister, Salisbury and Olson, Salt Lake City freight station, were called on duty at 8:00 A. M., March 28, 1936. These men were not regularly assigned employes, but part of the extra or fluctuating force. The work they were called for was completed at noon and they were, therefore, actually released at that hour, being recalled at 2:00 P. M. when other work developed. They were not, as contended by the Organization, given a two hour lunch period, and it is the position of the Carrier that there was no violations of Rules 46 and 55 as cited by the organization.

"At the time this case arose Stowers Simister, Salisbury and Olson were, as above stated, part of the extra force and ordinarily would have been called for service around 1:00 P. M. or 2:00 P. M. On March 28, 1936, however, there were three exhibits from the General Motors Show to load out for Denver, Colorado, loading of which was started on request of the shippers at 8:00 A. M. The work was completed at noon and the stowers released at that time, being recalled for service at 2:00 P. M.

"The Organization base this claim in part on the allegation that Messrs. Simister, Salisbury and Olson were instructed to take a two hour meal period, which the carrier denies. On the contrary, investigation discloses these men were actually released from duty at noon, with no instructions whatever with respect to a meal period."

There is in evidence an Agreement between the parties bearing effective date of February 1, 1926.

**OPINION OF BOARD:** Petitioner states that the employes for whom claim is made were notified when they were released at 12:00 noon to again report for service at 2:00 P. M., which Respondent does not specifically deny, although admitting that they "ordinarily would have been called for service around 1:00 P. M. or 2:00 P. M."

In view of these facts and all of the circumstances of this particular case, the 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 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 in view of the facts and circumstances of this particular case the claim will be sustained.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1940.