

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

CHICAGO & NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "That time and one-half rate for Sunday work be allowed the incumbents of seven positions in U. S. Mail Department, Chicago Passenger Station, account their positions not being properly relieved on their assigned week day of rest, with retroactive compensation for employees who have occupied these positions during the period from December 4, 1936 to date."

EMPLOYEES' STATEMENT OF FACTS: "1. The payroll numbers of positions involved were changed February 1st, 1940 as follows:

TITLE	OLD NUMBER	NEW NUMBER
Checker	9-7	47-7
"	10-7	48-7
Sorter	16-91	52-91
"	13-91	55-91
"	14-91	56-91
Handler	48-91	89-91
Trucker	52-92	162-92

"NOTE: Old position numbers will be used in respect to evidence and arguments.

"2. The claim for time and one-half for Sunday work on these seven positions was first made on December 4th, 1936, along with similar claims for 58 other positions. Since December 4th, 1936 there have been no changes in the duties, responsibilities, hours of service, days of rest, or rates of pay, except as increased by 1937 wages, of employees assigned to these seven positions.

"3. In the first appeal hearing on the property, which covered the whole 65 positions then in controversy, the following Joint Statement was agreed to by Terminal Superintendent F. H. Hemes and Division Chairman H. J. Davis:

'CLAIM: Request for the time and one-half for employees required to work on Sundays while their positions are being blanked on their assigned relief day during the week. This is in violation of Rule 40 and retroactive compensation is claimed for all employees involved.

'JOINT STATEMENT OF FACTS: We agree that there are 65 positions, (listed in appendix) in the U. S. Mail Department, Chicago Passenger Terminal that are required to perform Sunday work and

to 7:00 A. M. and an assignment is established by bulletin which provides that the incumbent thereof regularly perform relief service on Sundays on position 4-90 from 10:30 P. M. to 7:00 A. M. and Monday to Friday, inclusive, perform work as checker 10:30 P. M. to 7:00 A. M. The services of this man are not required on Saturday.

- "(3) Position 8-7, Checker, is assigned to service necessary to the continuous operation of the railway, with relief day on Sunday, 6:30 A. M. to 3:00 P. M. and an assignment is established by bulletin which provides that the incumbent thereof regularly perform relief service on Sundays on position 8-7 from 6:30 A. M. to 3:00 P. M. and Tuesday to Saturday, inclusive, perform work as sorter 6:30 A. M. to 3:00 P. M. The services of this man as sorter on Monday are not required.
- "(4) Position 13-91, Sorter, is assigned to service necessary to the continuous operation of the railway, with relief on Monday, 2:30 P. M. to 12:00 Midnight, and an assignment is established by bulletin, which provides that the incumbent thereof regularly perform relief service on position 13-91 Monday, 2:30 P. M. to 12:00 Midnight, and Tuesday to Saturday, inclusive, perform work as trucker 2:30 P. M. to 12:00 Midnight. The services of this man as trucker are not required on Monday.
- "(5) Position 14-91, Sorter, is assigned to service necessary to the continuous operation of the railway, with relief on Saturday, 6:00 P. M. to 2:30 A. M. and an assignment is established by bulletin, which provides that the incumbent thereof regularly perform relief service on position 14-91, Saturday, 6:00 P. M. to 2:30 A. M. and Monday to Friday, inclusive, perform work as trucker 6:00 P. M. to 2:30 A. M. The services of this man as trucker are not required on Saturday.
- "(6) Position 15-91, Sorter, is assigned to service necessary to the continuous operation of the railway, with relief day on Sunday, 10:30 P. M. to 7:00 A. M. and an assignment is established by bulletin which provides that the incumbent thereof regularly perform relief service on position 15-91, Sunday, 10:30 P. M. to 7:00 A. M. and Monday to Friday, inclusive, perform work as trucker 11:59 P. M. to 8:29 A. M. The services of this man are not required on Saturday.
- "(7) Position 27-91, Loader, is assigned to service necessary to the continuous operation of the railway, with relief day on Sunday, 6:30 A. M. to 3:00 P. M. and an assignment is established by bulletin which provides that the incumbent thereof regularly perform relief service on position 27-91, Sunday, 6:30 A. M. to 3:00 P. M. and Tuesday to Saturday, inclusive, perform work as mail handler 6:30 A. M. to 3:00 P. M. The services of this man as mail handler are not required on Monday."

POSITION OF CARRIER: "It is the position of the railway company that there is no violation of schedule rules nor provisions of Third Division, National Railroad Adjustment Board Award 750 in establishing an assignment to regularly perform relief service on a position necessary to the continuous operation of the railway and utilize the employee's time in other employment in order to provide six days work per week, and that claim of the employees that the incumbent of such position is entitled to rate and one-half for relief service performed on Sundays is not supported by provisions of rules applicable nor accepted practices thereunder."

OPINION OF BOARD: This claim involves the construction of the standard Sunday Rule which on many occasions has been before this Board. In its decisions this Board and others have held that if relief can be dispensed with on the day off of the regular incumbent it is self evident that the position cannot be one in continuous operation. In other words, it would be a contradiction in terms to call it a seven day position and blank

it on one day. See Awards 314, 336, 540, and 750 of this Division and Decisions E-456 and E-669 of the Express Board of Adjustment No. I. In Award 750 this Board said:

"The substance of the decisions as to the construction of the exception permitting pro rata pay for Sunday work is that the positions to which it is applicable:

- (a) Must be ones worked seven days per week.
- (b) That there must be a regularly assigned incumbent of the position.
- (c) That such incumbent must be accorded one regular day off in seven.
- (d) That to be a position in continuous operation it is essential that the day off be filled by a regularly assigned employee.

It would be a contradiction in terms to say that a position was in continuous operation if on the incumbent's day off the position could be unfilled. Those conclusions are reaffirmed."

With the rules in mind as set out above we turn to the record to ascertain the facts:

Position 9-7, checker, is regularly assigned Tuesday to Saturday and on Sunday he relieves the foreman, his position being blanked on Monday.

Position 10-7, checker, is regularly assigned Sunday to Friday, his position being blanked on Saturday.

Position 16-91, sorter, is regularly assigned Tuesday to Saturday and on Sunday fills position of checker, his position being blanked on Monday.

Position 48-91, handler, is regularly assigned Tuesday to Saturday and on Sunday he occupies the position of loader, his position being blanked on Monday.

Position 52-92, trucker, is regularly assigned Monday to Friday and on Sunday he occupies the position of sorter, his position being blanked on Saturday.

On each occasion when an employee worked on Sunday and his position was not actually filled on the off day he is entitled to time and one-half on the Sunday on which worked.

In regard to position 13-91, sorter: he was regularly assigned from Tuesday to Sunday. His relief day was on Monday and there was actually and regularly assigned a man to do his work on his relief day.

In regard to position 14-91, sorter: he was regularly assigned from Sunday to Friday with relief day on Saturday. On Saturday, position 84-92 is actually and regularly assigned to relieve this employee.

This record shows that the relief man assigned for positions 13-91 and 14-91 were actually and regularly assigned in accordance with the provisions of the Sunday and Holiday Rule. Employees on positions 13-91 and 14-91 are necessary to the continuous operation and are relieved one day each week by other regularly assigned employees. Under the exception provided in Rule 40 employees occupying positions 13-91 and 14-91 are entitled only to the pro rata rate for Sunday work.

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 the carrier violated provisions of Rule 40 of the current agreement covering the positions designated in this claim as 9-7, 10-7, 16-91, 48-91, and 52-92 and the employees filling these positions are entitled to be compensated at time and one-half rate for each of the Sundays worked since December 4, 1936; that there was no violation of the agreement covering positions 13-91 and 14-91 and the employees holding these positions are not entitled to be compensated.

AWARD

Claim sustained to extent indicated by the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of December, 1941.