Award No. 2421
Docket No. CL-2384

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY CO.

(G. W. Webster and Joseph Chapman, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Charles Kos should have been assigned to work of caring for heating plant at the 5th Avenue North, Minneapolis, Minnesota, Local Freight Station on January 7, 1942.

(2) That Charles Kos should be paid three hours' pay at rate of sixty-seven cents ($.67) per hour for each time he is required to care for heating plant on Sundays, holidays, or after his regular assigned tour of duty on week-days.

(3) That retroactive adjustment should be made of compensation he has received since he was assigned to work of caring for heating plant on Feb. 15, 1942.

(4) That he should be paid $2.01 for each call that he would have received from January 7, 1942, to February 15, 1942, had he been assigned to work of caring for heating plant on January 7, 1942.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains a freight office and warehouse at 5th Avenue North and 2nd Street, Minneapolis, Minnesota. Prior to 1940, this office and warehouse were heated by a coal-burning, hand fired, low pressure steam heating plant. Work of firing, cleaning flues, etc., was performed by regularly assigned warehouse employes; usually by freight truckers during the day and by watchmen at nights, on Sundays and on holidays. They were paid the rates of their regular positions.

In 1940 the carrier built a freight station in their Shoreham (Minneapolis) Yards; located about four miles from the 5th Avenue North Station. On or about July 1, 1940, most of the office and warehouse forces were moved to Shoreham. Warehouse force left at the 5th Avenue North Station consisted of: teamtrack foreman, freight checker and freight caller.

After the new Shoreham station was opened, a stoker was installed at the 5th Avenue North Station. This stoker does not hold sufficient coal to maintain required heat thru a very cold nite or over Sundays and holidays. During severely cold weather, it is necessary for someone to come to the

In summary the carrier contends:

1. This claim is for a wage increase over which this Board has no jurisdiction.
2. No loss in earnings was sustained by Caller Kos or any other employes coming within the scope of the clerks' schedule.
3. Exception (a) to Rule 1 states that schedule rules shall not apply to individuals where less than $30 per month are paid for special service and Item No. 1 of the Brotherhood's claim is contrary to this provision as well as the understanding in existence on this property.

These several considerations warrant the complete denial of the employes' claim in this dispute.

OPINION OF BOARD: About two hours of the regularly assigned time of Chas. Kos, a Caller, have since 1940 been employed in attending the heating plant in question, no janitor being on duty there; for that service he is paid at his regular rate of 67¢ an hour rather than the janitor's rate of 57¢.

During the seasons in which heat is required, it is necessary to have the plant attended outside of Kos' regular hours once each evening and twice on Sundays. That service was formerly performed for $20.00 per month by a section man not covered by this agreement. Pursuant to the request of the local committee of the Brotherhood, made on Jan. 7, 1942, it was agreed on Feb. 13, 1942, that the work should be assigned to Kos on an overtime basis and that, pending the determination of his pay, Kos should be placed on the payroll at $20.00 a month for this service; however, the Carrier has been paying him a minimum of three hours' pay for this overtime work in accordance with Rule 53, but at the above janitor's rate of 57¢ rather than the Caller's rate.

The Organization's contentions are—(1) that Kos was entitled to the work as of Jan. 7, 1942, under the second paragraph of Rule 51, which provides:

> "When it is practicable and will not interfere with the operation the employes whose regular duties are to be performed on call or overtime shall have preference to such work."

(2) that under Rules 53 and 57 he is entitled to three hours' pay on each call at the caller's rate of 67¢ per hour rather than the janitor's rate of 57¢, and (3) that retroactive adjustment should be made accordingly.

The Carrier does not question Kos' right of three hours' pay on each call in accordance with Rule 53, as it is already paying him in accordance therewith, and does not directly question the contention that the rate of pay should be determined by Rule 57 if Kos is entitled to the work under Rule 51. However, the Carrier contends that he is not so entitled and that none of the rules apply in this situation, on the ground that his case comes within Exception (a) as an individual to whom less than $30.00 per month is paid for special services.

The Carrier contends further that, because this case is within Exception (a) and not within the rules, the Board in sustaining this claim would be fixing a rate of pay, which is beyond its authority under Section 6 of the Railway Labor Act.

However, by its action in making payment at the janitor's rate under Rule 53, which amounts to approximately $60.00 per month, the Carrier itself has taken the case out of any possible application of the $30.00 exception. It is, therefore, unnecessary to consider whether the words "individual" and "special services," as used in Exception (a) to the Scope Rule, would

otherwise apply in this instance. Not being within Exception (a) for the reason stated, the work is obviously covered by Rules 1 (the Scope Rule), 6 (the Seniority Rule), 51 (the Overtime Rule), 53 (the Call Rule already followed by the Carrier in this instance), and apparently also by Rule 57 (the Rate Preservation Rule), whose application is not questioned by the Carrier in this record. But if Rule 57 does not apply, then Rule 53 requiring a minimum of three hours' pay but without specifying the rate, must obviously mean the same rate at which the employe is paid for exactly similar work during his regular hours; otherwise the provision would be meaningless. Certainly there is nothing in the rules nor in the practice cited to the Board to suggest that, while three hours must be paid for, the rate is to be fixed at less than is paid for the same work during Kos' regular hours, namely, the Caller's rate of 67¢ per hour.

Since the claim involves the determination of what the pay should be under the Agreement rather than the fixing of a rate of pay outside of the agreement, it is clearly within the Board's jurisdiction.

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 the Carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1943.