

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that—

(a) Occupant of position of Price Clerk in office of General Storekeeper, Sacramento, California, should not have been required to perform service on Saturday afternoons during the months of May, June and July, 1944.

(b) Mrs. Mildred McKenzie shall now be paid for three hours at the rate of time and one-half for services performed as Price Clerk each Saturday afternoon worked during the months of May, June and July, 1944.

EMPLOYEES' STATEMENT OF FACTS: During the months of May, June, more than one shift, time in excess of 8 hours, exclusive of the and July, 1944, Mrs. Mildred McKenzie was the occupant of position of Price Clerk in office of General Storekeeper at Sacramento, California and was required to perform service on Saturday afternoons during the period.

The work performed by Mrs. McKenzie was pricing work, preliminary to taking inventory. In performance of pricing work in office of General Storekeeper, Mrs. McKenzie and three other employees worked one and one-half hours overtime on five days per week; two employees worked eight hours each on Sundays; and Mrs. McKenzie alone worked three hours on Saturday afternoon.

POSITION OF EMPLOYEES: The following rules are cited from agreement bearing effective date of December 16, 1943:

Rule 13. "Where it has been the practice to allow General Office employees Saturday afternoons off without loss of pay, this practice shall be continued and these employees shall not be required to work except in case of emergency.

In Division and Department Offices, past practices shall be continued.

Other employees will be allowed Saturday afternoons off without loss of pay when it is practicable in the judgment of the employing officer and can be done without detriment to the service."

Rule 20. "Except where changing assignments in the exercise of seniority rights, or where furloughed employees are used on

equivalent of or in lieu of claims for time and one-half for time worked over forty hours per week. To pay the claim of the employees would be superimposing time and one-half upon the supplemental increases allowed as the equivalent of or in lieu of claims for time and one-half and time worked over 40 hours per week. Certainly no such payment was contemplated either by the schedule or the National Agreement.

Carrier contends that it has not violated any provisions of the Schedule, but that on the contrary, it has acted strictly in accordance with the 2nd paragraph of Rule 13. The Schedule does not require the payment of time and one-half for any service performed on Saturday afternoon, and the National Agreement of January 17, 1944, specifically granted an increase in lieu of any payments for overtime after 40 hours.

OPINION OF BOARD: The question for decision arises out of the application of the Saturday Afternoon Rule which is:

"Rule 13. Where it has been the practice to allow General Office employees Saturday afternoons off without loss of pay, this practice shall be continued and these employees shall not be required to work except in case of emergency.

"In Division and Department Offices, past practices shall be continued.

"Other employees will be allowed Saturday afternoons off without loss of pay when it is practicable in the judgment of the employing officer and can be done without detriment to the services."

Since Claimant, a Price Clerk, is an employee in the Office of the General Storekeeper, a Department Office, she is governed by the second paragraph of the rule.

Carrier's position is that under long established past practice the Price Clerk has worked Saturday afternoons during and preceding the period of taking inventory, and that the continuation of such practice is specifically authorized by the second paragraph of Rule 13. Looking at the rule alone we would be inclined at first impression to agree with Carrier's position.

The record contains evidence which shows, however, that when the Saturday Afternoon Rule was adopted in 1930 it was subdivided into the paragraphs we now find so as to permit certain work to be performed on Saturday afternoon under the second paragraph which is not emergency work and, therefore, would not be permitted under the first paragraph. Therefore, the offices mentioned in the second paragraph were not incorporated in the first paragraph.

However, at the same time the parties interpreted the term "past practices" of the second paragraph not to include past practices of performing routine work on Saturday afternoons. This is a reasonable and normal interpretation because otherwise the Saturday Afternoon Rule would be meaningless. If routine work was to be continued to be performed on Saturday afternoons after the adoption of the rule as it had been before the adoption there would be no reason for such a rule. Rules are not incorporated in an agreement without a reason, and we must find and give the reason its proper meaning in our consideration of the rule.

Carrier asserts the reason for subdividing the rule was because of a practice in the offices of a Division Superintendent and a Superintendent of Motive Power and such interpretation is applicable only to those offices and may not be applied to a Department Office. If that were a fact, it is logical that Department Offices would not have been inserted in the second paragraph of the rule but would have been placed in the first paragraph of the rule. We accept an interpretation as a whole, we do not take one part and discard another part.

It is clear to us that under the interpretation past practice does not authorize the work here considered to be done on Saturday afternoons.

The taking of an annual inventory may not be work which is included in a daily routine but the work of the Price Clerk in connection therewith is routine work. Compare Award 2460.

Even though the normal eight hour work day is not worked on Saturday, still the overtime rate for Saturday afternoon work not authorized by a Saturday Afternoon rule is proper. The eight hour day rule must be considered modified by the Saturday Afternoon rule. The propriety of awarding overtime rate for work performed on Saturday afternoon in violation of the Agreement has been established by this Division. See Awards 2040, 2268, 2349, 2460, and 3246.

The claim must be sustained for hours shown as worked in Carrier's Statement of Facts.

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 the Agreement.

AWARD

Claim (a) sustained; claim (b) sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of April, 1947.