

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

1. When, on April 28, 1946, it removed overtime work from Clerk Manford O. Artz, Cashier at the Depot at Cut Bank, Montana, consisting of selling tickets and assigned said work to an employe holding a position as Telegraph Operator, the work being removed only on Sundays and Holidays.

2. That the regular Clerical Employee M. O. Artz, adversely affected by reason of this violation of our Agreement, be compensated for eight hours at the rate of time and one-half for April 28th and for each and every Sunday and Holidays thereafter on which he was not allowed to perform the work.

EMPLOYEES' STATEMENT OF FACTS: Mr. M. O. Artz is the regularly assigned Cashier at the Depot at Cut Bank, Montana. He is assigned six days per week, Sunday being his day off. He is assigned to regular Cashier work and sells all tickets during the week for all trains arriving during his tour of duty. He, also, makes the Ticket Reports covering the sales of tickets during the week. On Sundays and Holidays, this work is being performed by a Telegrapher.

POSITION OF EMPLOYEES: On April 30, 1946, Mr. Artz submitted time slip claiming overtime payment for Sunday on account of this work being performed by a Telegrapher who is not regularly assigned during the week to perform the work in question. Mr. Artz continued to present overtime slips covering this work for the Sundays and Holidays in question which were declined by the Agent at Cut Bank, Montana.

The claim has been up on appeal to and including the highest authority designated by the Carrier to consider such matters.

The Organization contends that the Agreement by both its terms and intent contemplates that the work here involved should be assigned to and performed by the incumbent of the position to which such overtime work is necessary. The work herein involved and the entire violation is covered by Rules 36 and 37 of our Agreement.

RULE 36—OVERTIME. Except as provided in Rules 18, 34, 38, 43, 44 and 45, time on duty in excess of eight hours, exclusive of the

positions, provided the time devoted to work on any position other than his own does not exceed one hour and 30 minutes, in which case he will be paid for all such overtime work at the rate applicable, to the highest rated position on which work is performed, but not less than two (2) hours.

"However, in cases where it is known that more than one hour and 30 minutes overtime work is going to be necessary on each of two or more positions, the regular incumbent of each such position shall be called to perform same.

NOTE: This does not in any way nullify the provisions of Rule 38 (the Call Rule). Such rule, however, is only applicable in cases where the necessity for Sunday and holiday service is irregular and does not permit the continued use of an employe for less than eight (8) hours on Sundays over long continued periods; calls can not be included as part of a regular assignment and specific call must be given on each occasion such service is required. It is understood that this arrangement can not in any way be understood to provide a means to avoid filling positions on which continuous service is required on Sundays and holidays, nor to permit the continued use under the Call Rule of an employe on Sundays or holidays over long extended periods, although it is understood that the practice of calling employes for service on such days for several successive weeks due to seasonal increases in business such as the grain rush in the Fall, the beet sugar shipments, fruit rush, etc., is permissible."

The Carrier desires to direct the particular attention of the Board to that portion of this rule reading: "Except that in cases where Sunday or holiday overtime service is necessary which affects more than one position in an office, station or store, the incumbent of the position to which the greatest amount of such work is regularly attached shall be used." As has been shown, ticket sellers are covered by the scope of the Agreement with the Order of Railroad Telegraphers and the ticket selling performed by Mr. Artz was entirely incidental to his work as cashier. That this is a fact is shown by a check of the ticket sales at Cut Bank for the months of March, April and May, 1946, which shows an average of 10.3 tickets sold per day at that point on all shifts during that period, which clearly indicates the small amount of time Mr. Artz spent in this incidental work on one shift. Therefore, even under the provisions of Rule 37, if such rule were applied to duties falling under the scope of the Telegraphers' Agreement, the use of the telegrapher in this instance to sell tickets on Sunday is perfectly proper, since unquestionably the greatest amount of work attached to positions coming within the scope of such Telegraphers' Agreement is attached to this telegrapher's position rather than to the position of cashier.

The Carrier therefore holds that there was no violation of the rules of the Clerks' Agreement involved in this case since ticket sellers are covered by the scope of the Telegraphers' Agreement and the performance of ticket selling by Mr. Artz had been simply incidental to the duties performed by him coming within the scope of the Clerks' Agreement, and that, therefore the non-performance of such duties on Sunday cannot be held to be any more a violation of the Clerks' Agreement than would be the non-performance of clerical duties ordinarily performed by telegraphers as incidental to their work if such clerical duties were performed on Sundays by employes coming under the Clerks' Agreement, and we believe that under the circumstances your Board can do no other than deny the claim.

OPINION OF BOARD: At Cut Bank, Montana, the Carrier maintains the following office force: agent, telegraph operator, cashier, rate and revising clerk and clerk working 8 A. M. to 5 P. M.; a telegraph operator working 4 P. M. to midnight; and a telegraph operator working 12 midnight to 8 A. M. All are assigned six days per week. The unassigned day of the cashier, rate and revising clerk and clerk is Sunday. The others have a day off other than Sunday.

The record shows that the cashier and the rate and revising clerk were required to sell all passenger tickets during their tour of duty. The cashier, the claimant here, was also required to make up the ticket reports. On the other two shifts, ticket selling was handled by the telegraphers on duty. During the war period, claimant worked on his day off (Sunday) and performed the same duties as he did on his regular tour of duty during the week. On April 27, 1946, the Carrier, because of a reduction in business, discontinued calling the cashier for Sunday work. The work of ticket selling on Sundays was then assigned to the agent and telegrapher on duty. The Organization contends that it is a violation of their Agreement to assign the Sunday ticket selling to employees not within their Agreement.

Admittedly, the selling of tickets at this station is a seven day job necessary to the continuous operation of the railroad. The record shows that on six days of the week the cashier was required to perform ticket selling work. This Board has repeatedly held that work performed six days a week by a clerk is within the scope of the Clerks' Agreement on Sunday as well. Awards 3425, 3858, 3900. Under these holdings the Carrier cannot properly assign the Sunday work to one not under the Clerks' Agreement. In addition thereto, it being a seven day position, the work must be performed by clerks the full seven days of the week. If a regular relief man is not assigned or an extra clerk not available, the occupant of the positions is entitled to it on the overtime basis. Awards 3979, 3054, 2052.

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

The Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.