

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, 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 that J. W. Porter, Store Laborer at Elko, Nevada is entitled to and should properly have been called on Sundays for the performance of work ordinarily and regularly attached to his position and that he be compensated for all wage loss sustained since January 1, 1946, account of failure of the Railroad to call him for performance of this work.

EMPLOYEES' STATEMENT OF FACTS: J. W. Porter is assigned to position of laborer in Store Department at Elko, Nevada. As part of his regularly assigned duties, Porter is required to issue engine oil and prepare and issue waste. For a number of years prior to January 1, 1946, Porter was required to perform this work on Sundays. Effective January 1, 1946, Porter was no longer required to perform this work on Sundays but other employees were used in his place.

POSITION OF EMPLOYEES: The following rule is cited from agreement bearing effective date of December 16, 1943.

Rule 20: "Except where changing assignments in the exercise of seniority rights, or where furloughed employees are used on more than one shift, time in excess of 8 hours, exclusive of the meal period, in any 24-hour period, shall be considered overtime and paid on the actual minute basis at the rate of time and one-half.

Employees shall not be required to suspend work during regular hours to absorb overtime.

In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference. In working overtime on Sundays and holidays, the same principle shall apply."

The work involved in the instant dispute is that which is required on Sundays for the purpose of issuing engine oil, preparing and issuing waste. Rule 20 quoted above, provides that, in working overtime on Sundays and holidays, employees regularly assigned to class of work for which overtime is necessary shall be given preference. As part of his regularly assigned duties throughout the week, J. W. Porter is required to issue engine oil and prepare and issue waste. He is the only employee in the Store Department at Elko who ordinarily and regularly performs this work. Under the provisions

of Rule 20 quoted above, Porter is entitled to be given preference to perform this work when the same is required on Sundays or holidays.

CARRIER'S STATEMENT OF FACTS: Carrier's District Freight Terminal Department, Elko, Nevada, maintains a store in charge of a storekeeper, assisted by one store helper and one store laborer. Each of the employees from time to time issue lubricating oil and prepare and issue waste for use on locomotives, but this was the primary duty of Store Laborer, J. W. Porter. Also, assigned to six day position, Porter had been used every Sunday on an overtime basis. On each of these Sundays he consumed about two hours in the oil house. When the volume of business dropped off to the point that it was not necessary to have more than one man in the Store Department on Sundays, we discontinued requiring Porter to work on Sundays (effective March 1, 1946) because the storekeeper and store helper were each qualified to perform all of the duties on Sunday, whereas Porter was qualified only to perform the work of a laborer which included the issuing of lubricating oil and preparing and issuing waste for locomotive use.

Current agreement between the Brotherhood of Railway Clerks, effective December 16, 1943, contains the following rule:

"Overtime

Rule 20. Except where changing assignments in the exercise of seniority rights, or where furloughed employees are used on more than one shift, time in excess of 8 hours, exclusive of the meal period, in any 24-hour period, shall be considered overtime and paid on the actual minute basis at the rate of time and one-half.

Employees shall not be required to suspend work during regular hours to absorb overtime.

In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference. In working overtime on Sundays and holidays, the same principle shall apply."

POSITION OF CARRIER: It is the contention of Carrier that nothing in Rule 20 requires the use of any specific employee for the performance of overtime, on the contrary, it specifically includes any employees regularly assigned to **class of work**. The storekeeper was assigned to all classes of work at the Elko Store and the helper was assigned to all classes of work except supervision and other higher classes of work which are not here involved.

On Sundays it is necessary to perform various jobs in the Store Dept., the majority of which Laborer Porter is not qualified to handle but all of the duties are not sufficient in volume to warrant the use of more than one employee on any Sunday. If Carrier called Porter to issue the lubricating oil and prepare and issue waste on Sunday, it would also be necessary to call either the storekeeper or store helper to handle the other duties for which Porter is not qualified.

SUMMARY: Carrier contends that the claim of the employees should be denied because under Rule 20 it had the right to call any employees regularly assigned to class of work for which overtime is necessary and is not obligated to call any specific employee for any specific item of work.

The storekeeper and store helper were regularly assigned to the **class of work** here involved and Carrier did not violate the schedule in using them on Sundays instead of calling Laborer Porter for a small part of the class of work for which overtime was necessary.

OPINION OF BOARD: Claimant is assigned to position of laborer in the Store Department at Elko, Nevada. As a part of his duties, Claimant is required to issue engine oil and prepare and issue waste. For several years, prior to January 1, 1946, Claimant was required to perform this work on Sundays as overtime. After the foregoing date, Claimant was no longer used on Sundays and other Store Department employees were used in his place.

The applicable rule is:

"Except where changing assignments in the exercise of seniority rights, or where furloughed employees are used on more than one shift, time in excess of 8 hours, exclusive of the meal period, in any 24-hour period, shall be considered overtime and paid on the actual minute basis at the rate of time and one-half.

"Employees shall not be required to suspend work during regular hours to absorb overtime.

"In working overtime before or after assigned hours, employees regularly assigned to class of work for which overtime is necessary shall be given preference. In working overtime on Sundays and holidays, the same principle shall apply." Rule 20, current Agreement.

It is clear that on the Sundays for which Claimant seeks pay for the work, it was performed by the Storekeeper or Store Helper who were qualified to perform all the extra Sunday work which included only two hours' work usually performed by Claimant on his regular week day assignment. The Storekeeper and Store Helper were assigned to the same class of work as that ordinarily performed by Claimant. There is evidence that each of these employees performed the work in question from time to time although it was the primary duty of Claimant. In any event, Rule 20 reserves overtime work to employees regularly assigned to the class of work for which overtime is necessary. We adopt the reasoning of Award 4073 on this point. The overtime work having been assigned to employees regularly assigned to the class of work out of which it grew, it was assigned in accordance with the Agreement.

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 not violated.

AWARD

Claim denied.

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.