

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 MINNESOTA TRANSFER RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

- (1) When it required Mr. Fred Longbotham to leave his regular assigned position as Revising Clerk and work position of Traffic Clerk on the following Sundays: March 2, 9, 16, 23, 30 and April 6, 1947, also,
- (2) Claim that he be paid at the rate of \$8.79 for each of these days he was withheld from his assigned position as Revising Clerk in addition to the amount previously paid for service performed on such dates.

**EMPLOYEES' STATEMENT OF FACTS:** Effective February 21, 1947 employe Fred Longbotham, the claimant in this case, was awarded position No. 7 Revisor on the Rate Desk, Transportation Department, covered by carrier's bulletin No. 391 reading as follows:

MINNESOTA TRANSFER RAILWAY COMPANY

OFFICE OF THE AGENT

District No. 2

Bulletin No. 391

Written applications will be accepted for the following position until 8:00 A. M., February 20, 1947

Place	—Transportation Department
Position	—No. 7 Revisor
Wage	—\$10.14 per day
Hours	—9:00 A. M. to 6:00 P. M.
Day off	—Wednesday
Principal Duties	—Rating outbound LCL and CL; Revising inbound LCL and CL; Working corrections and Filing Tariffs

Position assigned 365 days per year.

initialed—J. A. W. 2-17-47

We express our appreciation not only for the adjustment, but also for the manner in which it was made, and insofar as this organization is concerned, and meeting with the approval with the management, we will close our file as of this date.

Yours very respectfully,

/s/ Fred Longbotham"

This subject was again reopened with Mr. C. S. Christoffer, Vice President and General Manager, April 23, 1947, over twenty-one months after the Carrier had considered the matter settled to complete satisfaction; also, after over nineteen months following the death of J. R. Wilber, Comptroller, who negotiated settlement of all claims. Position No. 7 was first mentioned in the reopened case on July 24, 1947, which was practically three months after instant claim was filed.

#### SUMMARY:

Carrier's contentions are that work assigned to claimant on each Sunday enumerated in this claim was properly assigned under Rule 42 of the current agreement; that no specific time was assigned each Sunday when assistance should be given to Traffic Desk Clerk and; that such assistance was not to interfere with assigned duties of Position No. 7 which was necessary to the continuous operation of the Carrier and, therefore, it would be temporary assistance when possible.

Carrier contends that there was no suspension of work during regular hours to absorb overtime, as we have shown that no overtime would have been required; that another traffic clerk position could have been worked on Sunday and assigned Monday off; therefore, there was no violation of Rule No. 37. Also there was no suspension of work on Position No. 7 to absorb overtime on that position.

Carrier contends that they have shown that prior to the filing of this claim there was no contention by the Clerks' Organization that Position No. 7 was not properly classified as necessary to the continuous operation of the Carrier and that Carrier had every reason to believe that complete accord had been reached on positions classified as necessary to continuous operation of the carrier at conclusion of negotiations on July 5, 1945.

When consideration is given to the above facts, it is clearly evident that there is no basis in equity, nor under the agreement between the Carrier and its Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees for the contention that the claimant in this case is entitled to \$8.79 for each of the days enumerated in this claim. Therefore, it is the position of the Carrier that the contention of the Employees should be dismissed and the claim accordingly denied.

(Exhibits not reproduced)

**OPINION OF BOARD:** Claimant held position of No. 7 Revisor. The duties of his position were confined to revising work. No traffic assignments were assigned to the position. It was considered necessary to the continuous operation of the Carrier and was assigned seven days per week, Claimant's assignment being 9:00 A. M. to 6:00 P. M., Wednesday off.

On the following Sundays, March 2, 9, 16, 30 and April 6, 1947, Claimant was required to leave his work on the Rate Desk and perform work on the Traffic Desk. The Traffic Desk work was lower rated work than Claimant's regular position. The work on the Traffic Desk belonged to Position 21, Monday through Saturday, and to Position 62 on Sunday. It is the contention of the Carrier that Claimant's position was not blanked on the Sundays specified,—he was merely asked to assist the relief man working on Position 62. This, even, cannot properly be done. Any extra or overtime work on Position 62 belonged to the occupant of Position 21 or others having a right to the work. The contract was violated when Claimant was required to perform it.

The Carrier contends that Claimant did not work on the Traffic Desk more than 5½ hours on any of the Sundays specified. This is based on evidence in the record that an adequate number of Traffic Desk employees were on duty after 3:00 P. M. on the Sundays specified.

Claimant was working a 7-day position that had to be filled 365 days in the year. Consequently, it had to be filled on the Sundays specified. The Carrier improperly used him on the Traffic Desk, a lower rated position, and paid him his assigned rate. What then is the penalty to be imposed for such a violation?

The effect of requiring Claimant to work on the Traffic Desk was to absorb overtime accruing on Positions 21 and/or 62. This is in violation of Rule 37, current Agreement, providing:

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

The penalty for such a violation is that the employee required to work other than his assigned position shall be paid the rate of the position worked for the hours actually worked thereon at the pro rata rate in addition to the rate of his assigned position. Awards 2695, 2823, 3416. Claimant is entitled to compensation for the number of hours actually worked on the Traffic Desk on the Sundays herein specified at the pro rata rate of Position No. 62 in addition to the rate of his regular assignment.

**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.

#### AWARD

Claim sustained per Opinion.

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.