

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY (Lines East)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Employee E. L. Boyce be compensated at the overtime rate for 3½ hours work performed on Saturday afternoon, June 29th, 1946.

JOINT STATEMENT OF FACTS: Employee Boyce was the regular occupant of Position W-6, Register Clerk, in the Dining and Sleeping Car Accounting Bureau, Western Avenue, Chicago, Illinois, rate: \$8.90 per day. The bulletin advertising position W-6 showed the hours of assignment as 8:30 A. M. to 5:00 P. M., daily except Sundays and holidays, exclusive of the meal period. By practice, the employees of this bureau are excused on Saturday afternoon at 1:00 P. M. in accordance with the provisions of Rule 52.

On Saturday, June 29th, 1946, employee Boyce was used to take the annual inventory of liquor stock from 1:00 P. M. to 4:30 P. M.

POSITION OF EMPLOYEES: There is an agreement between the two parties, bearing effective date of January 16, 1946, containing Rule 52, which reads:

"Clerical employees will be excused Saturday afternoons where it can be done without detriment to the service."

For years employees of the Dining and Sleeping Car Accounting Bureau have been excused after four and one-half (4½) hours work, or at 1:00 P. M. on Saturday afternoons, and were paid for the full eight (8) hour day.

The employees contend that employee Boyce had performed the duties required on his regular position and had completed his regular tour of duty at 1:00 P. M. and, therefore, when the Carrier required him to take up and perform extra or special work (not a part of his regular position W-6) from 1:00 P. M. until 4:30 P. M. at no additional compensation, it violated the provisions and intent of the Rules Agreement and the long established practice of excusing employees in this office on Saturday afternoon.

The Carrier points to Agreement Rules 26 and 30, also to the language "without detriment to the service", as contained in Rule 52, in support of its denial of the claim. The Carrier—by its interpretation of Rule 26 of the current agreement, and similar rules in preceding agreements prior to this

in excess of eight hours on June 29th, 1946, nor beyond the hours of his regular eight hour assignment to which his daily rate of \$8.90 applied; (c) payment in addition to the straight time rate for work which employe Boyce performed between 1:00 P. M. and 4:30 P. M. on June 29th, 1946, which period is within the regular hours of his assignment, is not provided for in the agreement and such payment would be in conflict with the provisions of Section 4 of the agreement signed at Washington, D. C. on January 17th, 1944.

2. There was no violation of Rule 52 because it was necessary that the Accounting Department of the C.M.St.P.&P.R.R. Co. arrange to have performed, on June 29th, 1946, the work involved in taking the inventory of the Commissary supplies, and that work could not be deferred because it had to be done at that time, therefore, the employe could not be excused without detriment to the service.

3. Rule 52 does not support the penalty payment claimed. We adhere to the contention that Rule 52 does not provide for any payment whatever. The rule is not a "pay" rule but the language of that rule does, of course, require the exercise of judgment on the part of the Carrier and unless it can be properly held that the Carrier acted arbitrarily in its exercise of judgment, then, and only then, could there possibly be any penalty allowable under Rule 52. We contend there was no arbitrary or improper exercise of judgment by the Carrier in the use of employe Boyce for the inventory work on June 29th, 1946.

We respectfully request that the claim be declined.

OPINION OF BOARD: Claimant asks for 3½ hours' pay at overtime rate for annual inventory work performed from 1:00 P. M. to 4:30 P. M., Saturday, June 29, 1946. Claimant, on that date, was the regular occupant of Position W-6, Register Clerk, in the Dining and Sleeping Car Accounting Bureau. By practice, the employes of this bureau were excused on Saturday afternoon at 1:00 P. M. in accordance with the provisions of Rule 52 of the Agreement between the parties; Rule 52 provides:

"RULE 52—SATURDAY AFTERNOONS—EXCUSED

Clerical employes will be excused Saturday afternoons where it can be done without detriment to the service."

Awards of this Board concerning similar Saturday afternoon work claims have held that rules similar to Rule 52 are intended to modify the agreement provision for payment of overtime after eight hours' work on any one day, so that four hours' work on Saturday is sufficient to earn eight hours' pay, except in case of emergency, or, as the rule is in the instant case, except where it would cause detriment to the service if the employes do not work on Saturday afternoon. See Awards 2460, 2349, 2345, 2268, 2073 and 2040.

In Award 2460 this Board pointed out that the taking of annual inventory there was not a part of the daily routine of the employes, but that it was an annual practice of the business, and that the circumstances there did not give rise to an imperative need for the performance of Saturday afternoon work. The Board finds the same to be true in the instant case. The record indicates that the work in question was not completed until Sunday, June 30, Claimant having performed 3½ hours of work on June 29, and 3 hours of work on June 30; the Carrier has not shown that all of the work involved in the inventory could not have been performed on June 30. The circumstances indicated by the record fail to establish that there would have been detriment to the service as contemplated by Rule 52 had Claimant not been required to work on Saturday afternoon.

In regard to the claim for time and one-half for all time actually worked on Saturday afternoon this Board has approved such claims under rules

similar to those involved in the instant case. See Awards 3509, 2460, 2349, 2268, 2073 and 2040.

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 employes involved in this dispute are respectively carrier and employes 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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.