

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, 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 September 3, 1949, at Lewistown, Montana, the Carrier removed work from our Agreement in violation of the Agreement between the Carrier and the Employees.

2. That the Carrier shall now reimburse L. B. Hortick and P. E. Stene, Clerk Warehousemen, for each and every Saturday after April 17, 1950 that this violation occurred up to but not including June 23, 1951.

EMPLOYEES' STATEMENT OF FACTS: On March 18, 1950, our Division Chairman, Mr. M. F. Tewmey, addressed a letter to the Superintendent of the Butte Division calling the violation to the attention of the Superintendent. This letter reads as follows:

"March 18, 1950

Mr. H. M. Shapleigh:

Referring to various correspondence in connection with violation Rules 37 and 40 hour week agreement.

As you know, there are various stations where employees of our craft, having Saturdays and Sundays off, and their work being performed by employees of other crafts, on their days off. Some of the work is performed by Agents or Operators or train service employees etc.

My information is that these rule violations are going on at Scobey, Plentywood, Watford City, Wolf Point, Malta, Chinook, Conrad, Glasgow, Butte, Lewistown, and no doubt other points.

This is a violation of Rule 37 as incumbents of positions performing this work on regular assignments should be called to perform the work on rest days, holidays, etc.

OPINION OF BOARD: There is no dispute between the parties to this dispute relative to a violation of the Agreement. The question presented is for a determination of the proper date on which payments should be made for the violation.

In brief the facts are that Carrier on being advised that certain violations of the Agreement were occurring at a number of its stations, made an investigation and advised the Agents at these stations to discontinue the practice. Such instructions were followed at all stations with the exception of the station at Lewistown, Montana where the violation continued. On June 23, 1951 claim was filed and paid for that day which was Saturday of the week, and likewise for several Saturdays following until the practice was discontinued. However, Petitioners contend here that payment for such violations should go back to April 17, 1950, which was the date of the conference on the disputed question which resulted in Carrier's advising Agents to discontinue the practice.

Respondent Carrier contends that no claim was filed prior to June 23, 1951 which was disposed of by payment of the claim filed which payments were continued as long as the practice continued thereafter; that payments for such violations prior to date of filing claim are not proper under the Railway Labor Act, as amended, Section 3, First (i).

We view the date of filing claim, June 23, 1951, as the controlling date on payments for the violation. To sustain the prior date, April 17, 1950, as requested in (2) of the claim would be to set up a precedent which might permit serious abuses in the payment of like claims to any date retroactively going back to the alleged inception of the violation. The parties are familiar with the procedure as provided in the Railway Labor Act for the filing of claims. Failure to follow the procedure in the filing must defeat the request for payment back to April 17, 1950. See Awards 2852, 4281, 4282, 4428, 4437, 4964, 4966 and 5098.

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 Claim 1 shall be sustained; Claim 2 denied in accordance with Opinion.

AWARD

Claim 1 sustained.

Claim 2 denied in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1954.