

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

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

THE MINNESOTA TRANSFER 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 rules of the current Agreement, effective February 1, 1951

1. When on September 4, 5 and 6, 1954 the Carrier failed to call Position No. 96 and Position No. 98 to perform overtime work on Saturday, Sunday and Labor Day in violation of the Agreement.

2. That the Carrier now be required to compensate Elaine Stevens, Position No. 96 and Wilda Farrington, Position No. 98, for eight hours at the punitive rate to each of the employes for each day, September 4, 5 and 6, and for each and every day thereafter each of the employes be compensated for eight hours at the punitive rate up to and including September 11, 1955, at which time the practice complained of was discontinued.

EMPLOYEES' STATEMENT OF FACTS: At the time the Forty Hour Week was put into effect, Positions No. 96 and No. 98 were designated as Five Day Positions with an assignment Monday through Friday, Saturday and Sunday being the rest days. These positions were set up by the Carrier as provided for in Rule 25, Paragraph (b), reading as follows:

"Five Day Positions. On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday."

Position No. 96, Comptometer Operator, was bulletined as follows:

"POSITION — No. 96 Comptometer Operator
LOCATION — Office — Transportation Dept.
RATE — \$13.02 per day
plus 1.04 " " C. of L. Adj.
HOURS — 9:30 A. M. to 6:30 P. M.
POSITION ASSIGNED — Five Days

attitude of the Third Division in cases of this kind and we rest our case thereon.

(Exhibits not reproduced.)

OPINION OF BOARD: Positions No. 96 and 98 were designated as five day positions to be worked Monday through Friday with Saturday and Sunday as rest days. The Agreement provides that when overtime work is required by the Company, the incumbents of the positions to which overtime work is necessary will be used to do the work. This same principle applies to working on rest days and holidays. There is a limitation on the latter not applicable to this dispute. In the instant case admittedly work was performed on September 4, 5 and 6, 1954 in Positions No. 96 and 98 by other than the incumbents, and it was work to which they were entitled on an overtime basis under the terms of the Agreement. After some negotiations and an exchange of correspondence a relief position for this work was established by mutual agreement, effective on or about September 11, 1955.

The record discloses that the Carrier, during the negotiations of this claim, did offer to pay the claimants at the rate of straight time pay for September 4, 5 and 6, 1954 but this offer was refused because the Organization concluded that the claimants were entitled to overtime rate of pay which is at the rate of time and one-half. We are of the opinion that the claimants were entitled to the work but were denied this right by the Carrier, and since the appropriate rate of pay for such work is clearly time and one-half we believe the penalty rate of pay is applicable and will so award.

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 Employee involved in this dispute are respectively Carrier and Employee 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 at penalty rate of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March, 1960.