

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21082
Docket Number CL-20980

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
((formerly Transportation-Communication Division)
(
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Transportation-Communication Division,
Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees on the Burlington Northern,
(GL-7721) that:

CLAIM NO. 1

(1) Carrier violated the Agreement between the parties when it failed to compensate L. F. Schact, second Operator, Falls City, Nebraska, for eight (8) hours punitive pay for service performed on Saturday, December 8, 1973, a rest day of his position.

(2) Carrier shall now compensate L. F. Schact for eight (8) hours at the punitive rate minus the four (4) hours and thirty (30) minutes allowed for December 8, 1973.

CLAIM NO. 2

(1) Carrier violated the Agreement between the parties when it failed to compensate W. E. Frederick, third Operator, Table Rock, Nebraska, for eight (8) hours punitive pay for service performed on Sunday, January 13, 1974, a rest day of his position.

(2) Carrier shall now compensate W. E. Frederick for eight (8) hours at the punitive rate minus the six (6) hours and forty (40) minutes allowed for January 13, 1974.

OPINION OF BOARD: In Claim No. 1, Claimant L. F. Schact was regularly assigned to the position of second operator at Falls City, Nebraska, with assigned hours of 3:00 p.m. to 11:00 p.m., Monday through Friday, rest days Saturday and Sunday. No relief service was provided on Saturdays and Sundays.

On Saturday, December 8, 1973 Claimant Schact was used to perform train order service from 3:00 p.m. to 7:30 p.m., for which he was compensated

at time and one-half rate for 4 hours and 30 minutes. Petitioner contends that instead of being so compensated, Claimant Schact should have been paid for 8 hours at time and one-half rate.

In Claim No. 2, Claimant W. E. Frederick was regularly assigned to the position of third operator at Table Rock, Nebraska, from Midnight to 8:00 a.m., Tuesday through Saturday, rest days Sunday and Monday. No relief service was provided on Sundays and Mondays.

On Sunday, January 13, 1974 Claimant Frederick was used to perform train order service from 12:01 a.m. to 6:40 a.m., for which he was compensated at time and one-half rate for six hours and 40 minutes. Petitioner contends that instead of being so compensated, Claimant Frederick should have been paid for 8 hours at time and one-half rate. (He also worked another hour beginning at 6:30 p.m. on the same date, but his appropriate compensation for this period of time is not in dispute.)

In support of its position on the above claims, Petitioner relies on Agreement Rule 24, Section II, B, (1) (a) and (2) (a) of the Schedule Agreement. These provisions of the cited rule are quoted in both parties' submissions. But the 8-hour minimum punitive pay time urged by Petitioner is subject to certain specified conditions, one of which is that the involved position is "regularly required to work three hours or less on Sundays " ((1) (a)); or "on such other designated rest day" ((2)(a)). Neither of the positions held by claimants met the applicable "regularly required" condition specified in the respective portions of Rule 24. The language of the rule being clear and unambiguous on the matter at issue, any past practice to the contrary cannot be considered controlling.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

G. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1976.