

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21082
Docket Number CL-20980

Lloyd H. **Bailer**, Referee

(Brotherhood of Railway, Airline and
(Steamship **Clerks, Freight Handlers,**
(**Express** and Station **Employees**
((formerly Transportation-Communication Division)

PARTIES TO DISPUTE: (**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,
(CL-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 6, 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 **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 Agreement was not violated.

Award **Number** 21082
Docket **Number** **CL-20980**

Page 3

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third** Division

ATTEST: *A.W. Paulsen*
Executive Secretary

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