

Award No. 1127
Docket No. CL-1159

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES

**INTERNATIONAL-GREAT NORTHERN RAILROAD
COMPANY**

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

SUGARLAND RAILWAY COMPANY

ASHERTON & GULF RAILWAY CO.

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood for payment of a minimum 8 hour day to Truckers Spenrath and Bunton each work day they have been worked and paid less than 8 hours at Austin, Texas."

EMPLOYEE'S STATEMENT OF FACTS: "During May, 1938, the organization filed complaint with the carrier regarding the handling of freight in our Austin Warehouse. The complaint was because of employes of transfer and trucking companies handling and trucking freight in the Warehouse and cars.

"Following this, the condition complained of was corrected for a while; but shortly thereafter the carrier again permitted non-employes to truck and handle freight in the warehouse and cars, and also began to use short hour truckers.

"We renewed our claim with the result the carrier does not now permit anyone except employes to handle freight and delivers all such freight to the tailgate of the trucks.

"The carrier continues to use short hour truckers and pays them only for actual time worked.

"The carrier employs the following regular force in the warehouse.

1 Warehouse foreman	7:00 A. M. to 12:00 Noon
	1:00 P. M. to 4:00 P. M.
1 Trucker	7:15 A. M. to 12:00 Noon
	1:00 P. M. to 4:15 P. M.

There is in evidence an agreement between the parties bearing effective date of April 1, 1939.

OPINION OF BOARD: In addition to the stipulation of Rule 45, Day's Work, that "except as otherwise provided in this Article eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work," Rule 47, Reporting and Not Used, not only provides for limited allowances to hourly rated employees whose seniority entitles them to regular employment "when conditions prevent work from being performed," but expressly stipulates that "if required to work any part of the time so held, and through no fault of their own are released before a full day's work is performed, will be paid not less than eight (8) hours' pay, unless they lay off of their own accord." Under either of these rules the claimants would be entitled to payment for a minimum eight-hour day, unless the carrier is relieved from making such payment by the following exception contained in Rule 47: "This guarantee will not be construed to apply to those who are employed to take care of the fluctuating work that cannot be handled by regular forces." In contending that the work here involved is of this fluctuating character, the carrier merely relies upon the fact that the regular truckers cannot handle the peak load which the business of the carrier involves. The record shows, however, that this peak load, in connection with which the claimants have been given short-hour employment, is regular and recurring, being the result of arrangements made by the carrier to handle the freight of the Acme and Universal distributing companies, and does not represent fluctuating work, either in the course of each day or from day to day, which results from unpredictable variations in the flow of traffic. The claimants worked with substantial regularity and with substantially fixed starting times, and no adequate reason appears of record why they should be deprived of the eight-hour guarantee contained in the Agreement.

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 the evidence of record discloses a violation of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1940.