

Award No. 1590
Docket No. CL-1620

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd K. Garrison, 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 COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(a) The carrier is violating the Clerks' Agreement at San Antonio, Texas by assigning the chief yard clerk 8:00 A. M. to 5:00 P. M. with a meal period of one hour, also

(b) Claim that the Chief Yard Clerk be paid one hour's overtime from November 1, 1940 until he is assigned eight consecutive hours without a meal period."

JOINT STATEMENT OF FACTS: "Continuous service is maintained in the San Antonio Yard Office where the following positions, all covered by the Clerks' Agreement, are maintained with the hours as indicated:

Chief Yard Clerk	8:00 A. M. to 5:00 P. M.
Industry Clerk	7:30 A. M. to 3:30 P. M.
Car Record Clerk	8:00 A. M. to 5:00 P. M.
Interchange Clerk	7:00 A. M. to 3:00 P. M.
Line Desk Clerk	8:00 A. M. to 4:00 P. M.
Yard Clerk	8:00 A. M. to 4:00 P. M.
Caller	8:00 A. M. to 4:00 P. M.
Report Clerk	11:00 A. M. to 8:00 P. M.
Line Desk Clerk	4:00 P. M. to 12:00 Midnight
Yard Clerk	4:00 P. M. to 12:00 Midnight
Caller	4:00 P. M. to 12:00 Midnight
Line Desk Clerk	12:00 Midnight to 8:00 A. M.
Yard Clerk	12:00 Midnight to 8:00 A. M.
Caller	12:00 Midnight to 8:00 A. M."

OPINION OF BOARD: Rule 40 provides as follows:

"For regular operations requiring continuous service, eight (8) consecutive hours without meal period shall be assigned as constituting a day's work, in which case not less than twenty (20) minutes shall be allowed in which to eat without deduction in pay. The twenty (20) minutes shall be allowed between the end of the fourth and sixth hour after starting time with due regard to the requirements of the position."

Rule 41 (a) provides as follows:

"Except for regular operations requiring continuous hours, all positions will have an assigned meal period, which will be allowed between the ending of the fourth and the beginning of the seventh hour after starting time. Employees required to work any part of the assigned meal period will be paid for the actual time worked at the rate of time and one-half, and will be allowed not less than twenty (20) minutes without deduction in pay in which to eat."

The employees contend in substance that the phrase in Rule 40, "for regular operations requiring continuous service," means "at points where continuous service is maintained." Since continuous service is maintained in the San Antonio yard office, it follows that if this interpretation is correct the Chief Yard Clerk should be assigned eight consecutive hours without a meal period.

The carrier contends that the phrase in question has reference not to points, but to positions whose duties need to be performed throughout the twenty-four hours. Since the services of the Chief Yard Clerk are completed in a single shift, it follows that if this interpretation is correct, Rule 40 does not apply to the Chief Yard Clerk's position, and he may therefore be assigned a meal period under Rule 41.

Rules 40 and 41 are complementary and must be construed together. Rule 41, taken in its most natural sense, relates to positions, without reference to points. It says that "positions will have an assigned meal period" except "for regular operations requiring continuous hours"—which seems to mean that all positions will have an assigned meal period except those whose regular operations need to be performed in rotation throughout the twenty-four-hour period. It would be a more strained interpretation to read Rule 41 as if it meant that all positions will have an assigned meal period except **at points where** there are some positions regularly operating on a twenty-four-hour basis. If, then, the exception in Rule 41 relates to positions and not to points, Rule 40 must likewise relate to positions and not to points, since the exception in Rule 41 clearly refers to Rule 40.

No particular significance can be attached to the use of the word "service" in Rule 40 as compared with the word "hours" in Rule 41. The two phrases ("continuous service" and "continuous hours") are obviously referring to the same thing and must therefore be taken as synonymous.

In the revision of the agreement between the parties (the present agreement becoming effective on November 1, 1940) the phraseology of Rule 40 was modified. In the old agreement the rule provided that "for regular operations requiring continuous hours, eight consecutive hours without meal period may be assigned." In the new agreement the phrase "continuous hours" was changed to "continuous service" and the word "may" to "shall." The latter change would seem to be the really significant one. If the draftsmen had meant to convey something new by substituting "continuous service" for "continuous hours," why did they use the phrase "continuous hours" in Rule 41, which was rewritten at the same time as Rule 40?

One further aid to what was intended may be derived from the wording of Rule 42, which deals with starting times. This rule was also rewritten at

the same time as Rules 40 and 41, and it begins in the second sentence with the phrase "where work is performed covering the 24 hour period. . . ." For reasons set forth in Award 1591, Docket CL-1624 we think that the phrase just quoted has reference to points. The sharp difference in wording between this phrase and the phrase "for regular operations requiring continuous hours" (or "service") indicates that the two phrases do not mean the same thing. If in Rules 40 and 41 the parties had meant to refer to points, why did they not use the phrase they used in Rule 42, namely, "where work is performed covering the 24 hour period . . . ?"

In the absence of any evidence of intention other than that which can be derived from the none too clear language employed by the parties in revising the rules, we think that the interpretation of Rules 40 and 41 contended for by the carrier is a more natural one than that contended for by the employees.

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 Rule 40 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of November, 1941.