

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 hours assigned the Report Clerk at the San Antonio, Texas Yard Office are in violation of the agreement, and

"(b) Claim that the Report Clerk be paid as provided in Rule 43 for all time before 2:00 P. M., retroactive to November 1, 1940."

There is in evidence an agreement between the parties bearing effective date of November 1, 1940.

JOINT STATEMENT OF FACTS: "From November 1, 1940 until January 12, 1941 inclusive, the Report Clerk was assigned from 12:00 Noon to 9:00 P. M. with a meal period of one hour. Effective January 13, 1941 the hours were changed so that the position now works from 11:00 A. M. to 4:00 P. M. and 5:00 P. M. to 8:00 P. M."

POSITION OF EMPLOYES: "The following positions, covered by the Brotherhood Agreement, comprise the San Antonio Yard Office force, with hours assigned 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

"Inasmuch as the work performed by the Report Clerk does not cover the 24-hour period, it is the contention of the Carrier that Rule 43 does not apply and your Honorable Board is respectfully petitioned to so rule."

OPINION OF BOARD: Rule 42, whose interpretation is here in question, reads as follows:

"Rule 42. Starting Time of Assignment

"(a) All assignments will have a fixed starting time. Where work is performed covering the 24 hour period, the starting time of each shift will be between the hours of five (5) and eight (8) A. M., two (2) and four (4) P. M., and ten (10) P. M. and midnight.

"(b) In no event may the starting or ending time of any assignment be between the hours of twelve (12) midnight and five (5) A. M., except by agreement.

"(c) Where only one employe covered by this agreement is employed such employe may be assigned to begin and end his tour of duty at any time."

The employes contend in substance that at points where continuous service is being maintained each shift, whether one of three consecutive eight-hour shifts or not, must start within the hours prescribed in paragraph (a).

The carrier contends in substance that paragraph (a) has reference only to shifts which constitute one or another of three eight-hour shifts.

In its present form the Rule dates from November 1, 1940. At that time it was completely rewritten. Some light upon its meaning may be gained from the history of the Rule. The old Rule (53) had read:

"Where three consecutive shifts are worked covering the twenty-four (24) hour period, no shift will have a starting time after 12 o'clock midnight and before five (5) A. M."

This Rule was identical with Rule 7 of Decision 757 of the United States Railroad Labor Board. This Rule when promulgated was ambiguous. It might have been construed in either of two ways. It might have been taken to mean that where there are three consecutive shifts, no one of **these shifts** shall start between midnight and five A. M. Or it might have been taken to mean that **at points where** there are three consecutive shifts no one of **these shifts or any other shift** (of the same class of employes) shall start between midnight and five A. M. The second of these two interpretations (which is in substance the one contended for now by the employes) was adopted by the United States Railroad Labor Board in Decision 3732 (a Telegraphers' case) and in 4147 (a Clerks' case). Decision 2766 also pointed in the same direction. On July 13, 1938, over two years before the parties rewrote the Rule now before us, this Board in Award 685 affirmed the interpretation which had been laid down by the United States Railroad Labor Board.*

The Rule before this Board in Award 685 was exactly the same as old Rule 7 except that instead of providing that no shift should start between midnight and five A. M., it said that the starting time of each shift should be between such and such hours. The same ambiguity existed as in old Rule 7; the problem of interpretation was the same; and it was answered as it had been answered before. As an original proposition Award 685 might have been decided the other way, since the language of the Rule might easily

*The principle of Award 685 has been reaffirmed in Award 1395 handed down April 16, 1941. Awards 1325 and 1471 in favor of the carrier dealt with rules containing significant and apparently intentional differences in phraseology from Rule 7.

have been taken in the opposite sense from the one adopted and since the authority of United States Railroad Labor Board decisions has never been regarded by this Board as very strong (they were not even discussed in the opinion in Award 685). The point, however, is that the decision had been made by this Board, and it would seem to be a reasonable assumption that the parties were aware of the decision and that, if they had intended to avoid its effect when they came to rewriting the rule, they would have used language making their intention unmistakably clear. The language which they did adopt, however, was more consistent with the interpretation laid down by this Board than with its opposite.

The ambiguity in the old Rule, as we have noted, resulted from the double use of the word "shift." This was eliminated from the new Rule. The new Rule said that "where work is performed covering the 24 hour period" the starting time of each shift would be so and so. Since the reference to three consecutive shifts was thus removed by the parties, there remained less reason than before for construing the phrase "each shift" as if it meant only each shift which was a part of three consecutive shifts. On the contrary, the more natural reading of the new language adopted by the parties, in the light of the history of the old Rule, is that each shift in general, whether part of a 24-hour sequence or not, should start within the assigned times at points "where work is performed covering the 24-hour period."

Another feature of the new Rule must be noted. Paragraph (c), like paragraph (a), begins with the word "where" and is obviously talking about points. This strengthens the idea that paragraph (a) is also talking about points. The natural construction of the Rule as a whole would then be as follows:

Paragraph (a) is talking about the busiest stations where work is performed throughout the twenty-four hours. At these stations the carrier is to be restricted in its assignment of each shift to the hours specified.

Paragraph (b) is talking about the smaller stations where service is not maintained continuously but where there are two or more employees of a given class. Here the carrier is less restricted and may assign any hours to the employees, provided they do not start or end between midnight and five A. M.

Paragraph (c) refers to the smallest stations—the one-man stations, and here the carrier is not restricted at all.

This interpretation seems on the whole the most natural one, taking into account the history of the old Rule and the changes made in writing the new one.

About a year before the revision of the Agreement now before us a revision was made of the Agreement between the Clerks' organization and the Chicago Great Western Railroad Company. There, as had been the case here, the starting time Rule was originally the same as old Rule 7 of Decision 757 of the United States Railroad Labor Board. But in their revision the parties, after first providing that where three shifts were worked covering the 24-hour period the starting time of each shift would be so and so—a substantial repetition of the ambiguous form of old Rule 7—went on to provide in the next sentence and as an integral part of the very same paragraph that "shifts other than those covering the 24-hour period may be started at any time except between midnight and five A. M." In Award 1471 the Board held that this language meant what it said, namely, that all shifts except those which were part of a 24-hour sequence could be started at any time except between midnight and five in the morning.

By contrast, in the revision of the Rule now before us the parties, instead of using language which unmistakably was intended to avoid the kind of interpretation laid down in Award 685, used language which was even more consistent with that interpretation than the old Rule itself had been.

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 employe involved in this dispute are respectively carrier and employe 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 42 (a) was violated and that the Report Clerk should be compensated as requested.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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