

Award No. 1615
Docket No. CL-1668

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Sidney St. F. Thaxter, 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 by refusing to reduce all 365 day assigned positions in the Timekeeping Department in the Assistant General Manager's Office at Palestine, Texas to 306 day assignments and adjust the daily rates of pay so that the earnings will be the same for 306 days service as they were for 365 days service, also

"(b) Claim that adjustment in the daily rate be made retroactive to November 1, 1940 and that all employees involved in or affected by this agreement violation be paid an additional day at the rate of time and one-half for each Sunday and holiday worked from November 1, 1940 until proper assignment and rate is made effective."

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

EMPLOYES' STATEMENT OF FACTS: "The following positions in the timekeeping department at Palestine, Texas are assigned on a 365 day basis;

Chief Timekeeper	\$6.90 per day
Timekeeper	6.15 " "
Timekeeper	6.15 " "
Timekeeper	6.15 " "

"The above positions perform only that work generally required in connection with the checking and keeping time.

"The above positions are all assigned 365 days per year and are required to hold themselves available for service, but none of them actually work every

"As to the time claimed for each Sunday and holiday worked November 1, 1940, until the assignments are changed: It is the contention of the Carrier that no date was set in the letter addressed to Mr. Dyer on October 13, referred to above, as to when the changes would become effective, and, therefore, employees are not entitled to extra compensation for work on Sundays and holidays until such time as an agreement can be reached between the representatives of the Carrier and the Organization as to the effective date of the change in the assignment as, if and when made.

"While the General Chairman of the Organization had notified the Carrier that the Organization was making the claim for Sundays and holidays worked since November 1, 1940, no discussion was had concerning the same at the conference on May 19 and 20, 1941, referred to above, the only matter having been discussed being with respect to the positions which the Organization proposed to change from a 365 day annual assignment to a 306 day annual assignment.

"None of the employees listed in the Carrier's statement of facts have been required to work a full day on Sunday during the time for which claim has been made and many Sundays some of the employees for whom claim is made have not worked at all.

"It is the contention of the Carrier that your Honorable Board should dismiss this case for lack of jurisdiction."

OPINION OF BOARD: In so far as the interpretation of the agreement is concerned this case involves exactly the same question as was considered in Docket No. CL-1679, Award No. 1614. We there held the letter of October 13, 1940 to be a part of the agreement effective November 1, 1940, and that it required the carrier as of November 1, 1940 to reduce all 365 day assignments not necessary to the continuous operation of the carrier to 306 day assignments without a reduction in the total pay received by the employees affected.

The positions here involved are the 365 day assigned positions in the Time-keeping Department in the Assistant General Manager's Office at Palestine, Texas. In view of the construction which we placed in Docket CL-1679, Award No. 1614, on the phrase "not necessary to the continuous operation of the carrier," we must hold that all of the assignments covered by this case should have been reduced, effective November 1, 1940, to 306 day annual assignments without any reduction of the earnings of the men employed in such positions.

For the reasons expressed in Docket CL-1679, Award 1614, we hold, however, that such employees are not entitled to time and one-half for Sundays and holidays worked since November 1, 1940 but only to the pro rata rate.

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 agreement of October 13, 1940 is supplemental to the current agreement; that it has the same effective date, viz., November 1, 1940, and applies to all the positions involved in this dispute, they having 365 day assignments and not being "necessary to the continuous operation of the carrier."

AWARD

Claim (a) sustained; claim (b) sustained to this extent—that each employe be paid an additional day's pay at the pro rata rate established under claim (a) for each Sunday and holiday worked from November 1, 1940 until a correct assignment in his case shall have been made effective, less amounts actually received for regularly assigned working hours on such days.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of November, 1941.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 1615
DOCKET CL-1668**

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees

NAME OF CARRIER: 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)

Upon application of the representative of the Carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

This case is governed in general by the Opinion in Award No. 1614, which is a key case controlling this and several others.

In the Carrier's request for an official interpretation of Award No. 1615, Docket No. CL-1668, and the Brotherhood's reply thereto, the parties are in agreement that the period involves November 1, 1940, to December 1, 1941, a total of 395 days inclusive of Sundays and holidays.

The parties are in disagreement as to the interpretation of that part of the award which reads as follows: "claim (c) sustained to this extent—that each employe be paid an additional day's pay at the pro rata rate established under claim (b) for each Sunday and holiday worked from November 1, 1940 until a correct assignment in his case shall have been made effective, less amounts actually received for regularly assigned working hours on such days."

It must be conceded that the above language taken by itself is not clear. When, however, we consider the whole controversy and the opinion in Award 1614, we think it becomes apparent what was meant.

The purpose of the System Committee in filing the claims was to make effective an agreement to reduce as of November 1, 1940 all 365 day assignments, not necessary to the continuous operation of the carrier, to 306 day assignments with an adjustment of the daily rate so that the earnings would be the same as received for 365 days. In the case now before the Board for an interpretation it is admitted that the agreement was not made effective until December 1, 1941. No controversy now exists as to the application of the award since December 1, 1941. The sole difficulty is as to the period prior to such date.

The Carrier maintains that the employes were entitled to be paid the new rate for Sundays and holidays actually worked and should receive nothing for all other Sundays and holidays. This contention is based on the assumption that the Carrier should be regarded as having made the new assignments effective November 1, 1940, when in fact it delayed doing so until

December 1, 1941. If the Board had intended to adopt the present contention of the Carrier it would have been a very simple matter to have framed the award to carry out such intent. On the other hand if the language of the opinion in the key award No. 1614 had been strictly followed it could have been claimed by the employees that, to use the language of the opinion, having been "regularly assigned within the meaning of the rule (rule 47 is referred to) to work on Sundays and holidays" they were entitled to be paid at the new per diem rate for every Sunday and holiday during the period. It would have been very easy to have framed the award to carry out such a purpose. It is apparent, however, from the language used that something less than that was intended.

Reading the award as an entirety in the light of the opinion, we think the purpose was to permit each employe to retain the compensation which he had received under the old assignment from November 1, 1940 to December 1, 1941, and in addition he should be paid the difference between the old per diem rate and the new for every day actually worked during that period.

To apply such formula by way of example to the position of chief time-keeper, one of the positions involved in the present controversy, we get the following result. There were 395 days during the period, but 19 Sundays and holidays were not actually worked. The difference between the old rate and the new rate would be \$1.33 per day. The employe in question would be entitled to receive exclusive of overtime $\$1.33 \times 376$, the number of days actually worked, or \$500.08 additional compensation.

Referee Sidney St. F. Thaxter, who sat with the Division as a Member when Award 1615 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of November, 1942.