

Award No. 1627
Docket No. CL-1748

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 violated the Clerks' agreement by refusing to make effective as of November 1, 1940, the annual assignments and rates of pay shown in Exhibit A attached hereto and made a part of this claim.

"(b) Claim that the annual assignments and rates of pay shown in Exhibit A be applied retroactive to November 1, 1940 and that employees involved in or affected by the carrier's actions be compensated for all losses sustained. Also

"(c) Claim that each Sunday and holiday from November 1, 1940 to June 1, 1941 be paid for at the rate of time and one-half."

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

EMPLOYEES' STATEMENT OF FACTS: "On November 1, 1940, and prior thereto, the positions listed in Exhibit A were assigned 365 days annually.

"On November 1, 1940, an agreement became effective requiring that all 365 day assignments, not necessary to the continuous operation of the carrier, be reduced to 306 days annually. The agreement further required that the rates of pay be adjusted so that the earnings of the positions would be the same for 306 days' service as they had been for 365 days' service.

"Effective June 1, 1941 the carrier reduced the annual assignment of all the positions shown in Exhibit A from 365 days annually to 306 days annually and increased the rates of pay so that the earning of the positions are the same for 306 days' service as they were for 365 days' service."

quoted in the position of the Carrier, and your Honorable Board is respectfully petitioned, in view of the evidence submitted herein, to deny the claim of the employes in the instant case."

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 employes affected.

There are 71 positions here involved, 70 of which the carrier has agreed to reduce to 306 day annual assignments. One position, that of Counterman, Mechanical Stores Department, at Palestine, Texas, the carrier claims is necessary to the continuous operation of the carrier and should remain on a 365 day annual assignment. The only question with respect to the other positions is as to the effective date of the change. The carrier claims that the effective date should have been June 1, 1941 when it is claimed an agreement was reached between the parties as to the status of the positions; the committee claims that the change should have been made effective November 1, 1940.

The question of the effective date was settled by our Award 1614, Docket CL-1679. In view of the construction which we placed there on the phrase "not necessary to the continuous operation of the carrier" we must hold that the assignment of Counterman, Mechanical Stores Department at Palestine, Texas should have been reduced to a 306 day annual assignment.

For the reasons expressed in Docket CL-1679, Award 1614, we hold, however, that such employes 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 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 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; 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 the correct assignment in his case was 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. 1627
DOCKET CL-1748**

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 representatives of the Employees 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 1614, which is a key case controlling this and several others.

In the petitioner's request for an official interpretation of Award No. 1627, Docket No. CL-1748, and the Carrier's replies thereto, the parties are in agreement that the 14 monthly rated positions here involved, were not required to work on any Sunday or holiday between November 1, 1940 and June 1, 1941. Claim (c) of Award No. 1627, therefore, is not involved in this request and we will deal only with Claims (a) and (b) of the Statement of Claim.

Most important of all in settling the question now before us we should read again with care the letter of the Carrier to the General Chairman of October 13, 1940, which supplemented the Agreement effective November 1, 1940. The second paragraph of this reads:

"It is agreed that all 365 day assignments not necessary to the continuous operation of the carrier, will be reduced to 306 day assignment and the daily rate will be adjusted so that the earnings will be the same as received for 365 days."

Claim (a) in the instant case sets forth that the Carrier had refused to reduce the assignments in accordance with this Letter Agreement.

Claim (b) reads as follows:

"Claim that the annual assignments and rates of pay shown in Exhibit A be applied retroactive to November 1, 1940 and that employees involved in or affected by the carrier's actions be compensated for all losses sustained."

The employees here concerned are paid on a monthly basis and their claim is that they have not been treated in the same manner in the carrying out of the terms of the award as were the daily rated employees and certain of the monthly rated employees. They contend that they have not been granted the same proportionate increase in their daily rates as was given to the employees concerned in the other awards.

The question whether the Carrier violated the Agreement in not changing the rate of these employes from a monthly basis to a daily basis is not, as we see it, involved in this Interpretation.

We cannot agree that the method contended for by the Employes should be applied to this case. In our opinion they fail to recognize that the increase of daily rates of pay referred to in the Letter Agreement and asked for in Claim (b) was for just one purpose as stated in the letter: "so that the earnings will be the same as received for 365 days." The sole purpose of the Letter Agreement was to provide for a reduction in the number of working days by 59 and to require that the employes should receive the same total pay for the 306 days under the new assignment as they had received for the 365 days under the old.

It is obvious that in order to accomplish this result the basic rate had to be raised in proportion as the number of days constituting the assignment was diminished. For example: An employe working 365 days under the old assignment at a monthly rate of \$290.00 would receive for a year's work \$3,480.00 and the basic rate for one day would be \$9.53. On the 306 day assignment which the Agreement calls for, his basic rate per day would have to be increased to \$11.37 to produce the same amount for the year as called for by the Agreement. And what is true for the whole year is true for any fractional part of it.

So long therefore as the employe has received that basic rate for the number of days actually worked since November 1, 1940, the day when the change in the assignment should have been made effective, he has been paid in accordance with the Agreement, of course leaving out of consideration on this hypothesis all questions of overtime or other variations from the basic rate.

Referee Sidney St. F. Thaxter, who sat with the Division as a member when Award 1627 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 20th day of May, 1942

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 2 TO AWARD NO. 1627
DOCKET CL-1748**

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, as applied to employes involved in the dispute other than those covered by Interpretation No. 1 to Award No. 1627, dated May 20, 1942, the following interpretation is made:

The Carrier, requesting interpretation, and the Employees, responding thereto, are in agreement that the facts, circumstances and Award in this Docket are the same as those in the case covered by Award No. 1615, Docket CL-1668. This case, alike with the case covered by Award No. 1615, is governed in general by the Opinion in Award No. 1614, which is a key case controlling this and several others.

Interpretation No. 1 to Award No. 1615 adopted this date will be applied as the interpretation to this Award No. 1627 to employes involved other than the employes occupying the 14 monthly rated positions covered by Interpretation No. 1 to this Award No. 1627.

Referee Sidney St. F. Thaxter, who sat with the Division as a member when Award 1627 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.