

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 EMPLOYEES**

HOUSTON BELT & TERMINAL RAILWAY COMPANY

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

"(a) The carrier is violating the Clerks' Agreement, effective November 16, 1940, by refusing to reduce the annual assignment of the cashier-accountant at the Union Station from 365 days to 306 days with a rate of \$218.02 per month. Also

"(b) Claim that the cashier-accountant be paid an additional day's pay at the rate of time and one-half for each Sunday and holiday worked from November 16, 1940 until correct assignment and rate of pay is made effective."

There is in evidence an agreement between the parties bearing effective date of November 16, 1940.

EMPLOYEES' STATEMENT OF FACTS: "The position of cashier-accountant at the Union Station, Houston, Texas has an annual assignment of 365 days and is paid \$218.02 per month.

"The duties assigned to and performed by the cashier-accountant are:

- "1. Enter daily ticket sales in ledgers.
- "2. Balance ticket sales with cash.
- "3. Make remittance and take to banks.
- "4. Obtain necessary change from bank.
- "5. Post and balance cash books.
- "6. Make monthly ticket reports for B. S. L. and W.
- "7. Order and post B. S. L. and W., and St. L. B. and M. ticket stock.
- "8. Make ticket exchange reports.
- "9. Handle all correspondence pertaining to the accounts and prepare such special reports as may be called for.

"The work of this position deals exclusively with transactions that have been entirely completed insofar as the movement of passengers is concerned, and is not in any way connected with the actual operation of the carrier."

any claim for a day's pay for each Sunday and holiday worked since November 16, 1940 be made as position is properly assigned to work 365 days per year.

"The employes are basing their claim for change in assignment on a special agreement made on October 31, 1940, which read as follows:

"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 rate will be adjusted so that the earning will be the same as received for 365 days.

"This understanding will remain in effect until changed in accordance with the terminating rule of the agreement."

"When the above special agreement was made it was the contention of the employes that many positions were assigned to 365 days and that no necessity existed for such assignment, claiming that many came down for an hour or two on Sunday and were off balance of the day, and that the reporting on Sundays and holidays was actually not necessary. On this basis the management agreed to the conditions contained in special agreement, and several positions were changed from a 365 to a 306 day assignment; however, it was never the intention to disrupt the work by changing employes actually necessary to the handling of the business from 365 to 306 day assignments.

"This position is required to work full 8-hour day Sundays and holidays and is necessary to the proper handling and continuous operation.

"The Board's attention is specially called to the fact that special agreement referred to above does not exist any longer as on November 16, 1940 a new agreement with Clerks Organization was made and Rule 70 contained therein reads as follows:

"This agreement shall be effective November 16, 1940, superseding all other rules, agreements and understandings in conflict herewith and shall continue in effect for one year and thereafter until it is changed as provided herein or under the provision of the Railway Labor Act."

"From the foregoing it will be clearly seen that it is necessary for position to be assigned 365 days, further that actually no rules or agreements exist upon which the Organization can base their claims, and claims should be denied in their entirety."

OPINION OF BOARD: This case involves the application of Rule 47 of an agreement effective November 16, 1940 which the System Committee claims has been supplemented by a letter dated October 31, 1940. The rule and the letter read as follows:

"Rule 47. Sunday and Holiday Work

"(a) Work performed on Sundays and the following legal holidays; namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by Proclamation shall be considered the holiday) shall be paid for at the rate of time and one-half, except that employes regularly assigned to work full time on Sundays and the seven designated holidays, and men called to fill their places on such regular assignment, will be compensated at the pro rata rate of the position."

"Houston, Texas
October 31, 1940

Mr. J. L. Dyer, General Chairman
Brotherhood of Railway & Steamship Clerks
Houston, Texas

Dear Sir:

With reference to agreement regarding 365 day assigned positions not necessary to the continuous operation of the carrier.

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 rate will be adjusted so that the earning will be the same as received for 365 days.

This understanding shall remain in effect until changed in accordance with the terminating rule of the agreement.

Yours truly,

/s/ W. G. Choate
General Manager.

Accepted:

/s/ J. L. Dyer
Gen'l Chairman, B. of R. C."

It will be noted that the rule is identical with Rule 47 involved in Award 1614, Docket CL-1679, and that the letter with one exception is identical with the letter of October 13, 1940 there involved, even to being signed by the same individual who was acting as General Manager of both railroads. The only difference in the two letters is that in that of October 13th the word "daily" appears before the word "rate" in the second paragraph. This difference does not in our opinion change the meaning.

All that we said in Award 1614, Docket CL-1679 with respect to the letter of October 13, 1940, except as to the effect of Rule 71 is applicable here, and reference is made to that opinion for our views as to the status and interpretation of the letter. Rule 70 of the present agreement corresponds to Rule 71 of the agreement in the other case and reads as follows:

"Rule 70. Date Effective and Change

"(a) This agreement shall be effective November 16, 1940, superseding all other rules, agreements, and understandings in conflict herewith and shall continue in effect for one year and thereafter until it is changed as provided herein or under the provisions of the Railway Labor Act."

It will be noted that as this rule reads the agreement supersedes all prior rules, agreements, and understandings and not merely those which antedated the letter in question as was the case under the provisions of Rule 71 involved in Award 1614, Docket CL-1679. The carrier insists on the letter of the rule which became effective November 16th, and claims that in accordance with its terms the letter agreement of October 31, 1940 is terminated. It is obvious, however, that a literal reading of Rule 70 in this respect does violence to the true intent of the parties. Though the rules became effective sixteen days after the date of the letter, they were in fact contemporaneous with it; and the letter was intended to be a part of the agreement. The carrier claims that the letter was a supplement to the agreement of March 1, 1930. But is it reasonable to suppose that the parties would engraft an amendment, the effect of which was to be projected far into the future, on an agreement which they both knew was about to terminate? Furthermore, the parties negotiated long after the time when the carrier now claims the letter agreement was ended as to what positions came within its terms.

We therefore hold that the words "the terminating rule of the agreement" in the third paragraph of the letter refer to Rule 70 of the agreement effective November 16, 1940, and that the letter is a part of that agreement and required the carrier as of November 16, 1940 to reduce all 365 day annual assignments not necessary to the continuous operation of the carrier to 306 day annual assignments without any reduction in the total pay received by the employees affected.

The remaining question is whether the position held by the claimant, that of Cashier-Accountant at the Union Station, Houston, Texas, is a position "necessary to the continuous operation of the carrier." This is a question of fact.

The work assigned to the position is cashier's work, which includes counting of cash received from ticket clerks, assorting ticket stubs in order to determine the proper distribution of revenues accruing to each line, making change for the dining car employees, balancing accounts, depositing money in the bank, posting cash books, and answering correspondence. Surely it cannot be maintained that such duties are necessary to the continuous operation of the carrier. The carrier points out that on Saturday afternoons and Sundays certain of the ticket offices are closed and some additional work is thereby thrown on the Depot Ticket Office. To help out in this situation the cashier-accountant has worked at the ticket window. This work is not, however, a part of his regular duties and has been merely a casual employment. We therefore decide that the position held by the claimant is one not necessary to the continuous operation of the carrier.

For the reasons given in Award 1614, Docket CL-1679, the claimant is not entitled to time and one-half for Sunday and holiday work 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 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 the agreement of October 31, 1940 is supplemental to the current agreement; that it has the same effective date, viz., November 16, 1940 and applies to the position involved in this dispute, it having a 365 day assignment and not being "necessary to the continuous operation of the carrier."

AWARD

Claim (a) sustained; claim (b) sustained to this extent—that the employee 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.