

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
Bruce Blake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**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 assign the station force at Kingsville, Texas in accordance with Rule 42 and 40. Also

(b) Claim that the station employes be paid on an overtime and call basis for all time in excess of eight consecutive hours and for all time in advance of the hours specified in Rule 42."

EMPLOYES' STATEMENT OF FACTS: "We have the following positions covered by the Clerks' Agreement, at Kingsville, Texas:

Station Clerk	8:00 A. M. to 12:00 Noon
	1:00 P. M. to 5:00 P. M.
General Clerk	9:30 A. M. to 12:00 Noon
	1:00 P. M. to 6:30 P. M.
Trucker	4:30 P. M. to 9:00 P. M.
	10:00 P. M. to 1:30 A. M.
Ticket-Bill Clerk	9:00 P. M. to 1:00 A. M.
	2:00 A. M. to 6:00 A. M.
Porter	4:00 A. M. to 9:00 A. M.
	10:00 A. M. to 1:00 P. M.
Trucker	7:00 A. M. to 12:00 Noon
	1:00 P. M. to 4:00 P. M.

"Continuous service is maintained in station service at Kingsville, with one or more employes on duty at all times."

POSITION OF EMPLOYEES: "The employes quote the following rules from the current agreement in support of this claim:

'Rule 42. Starting Time of Assignments

'(a) All assignments will have a fixed starting time. Where work is performed covering the 24 hour period, the starting time of

which at the time the current Agreement became effective, had starting or ending time between 12:00 midnight and 5:00 A. M., would not be affected by Section (b) of Article 42, but that positions established subsequent to the effective date of Agreement November 1, 1940, wherein the Carrier found it necessary to assign employe with starting or ending time between 12:00 midnight and 5:00 A. M., it would be by agreement as provided in Rule 42, Section (b).

"The assignment of positions listed in Carrier's Statement of Facts with starting and ending time between 12:00 midnight and 5:00 A. M. had the same assignment prior to and at the time the Agreement became effective.

"It is the contention of the Carrier that the assignment of the positions listed in Carrier's Statement of Facts are not in violation of Clerks' Agreement and your Honorable Board is respectfully petitioned to so rule."

OPINION OF BOARD: So far as the claim is based on alleged violation of Rule 40 it must be denied. The same contention here made was presented in Docket CL-1620, Award 1590 and decided adversely to the Organization.

The validity of the claim based on violation of Rule 42 (a) would seem clear. This rule reads:

"(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."

It is clear, broad and comprehensive; and, as pointed out in the Opinion in Award 1591, was obviously designed to escape the narrow construction placed upon previous rules of a similar nature in such disputes as were disposed of by Awards 1325 and 1491.

That "work is performed covering the 24 hour period" at the Kingsville station is manifest from the following schedule furnished by the Carrier.

"Passenger station:

General Clerk	9:30 A. M.-1:30 P. M.—	2:30 P. M. to 6:30 P. M.
Ticket-Bill Clerk	9:00 P. M.-1:00 A. M.—	2:00 A. M. to 6:00 A. M.
Porter	4:00 A. M.-9:00 A. M.—	10:00 A. M. to 1:00 P. M.
Trucker	4:30 P. M.-9:00 P. M.—	10:00 P. M. to 1:30 A. M.

Freight station:

Station Clerk	8:00 A. M.-12:00 Noon and 1:00 P. M. to 5:00 P. M.
Trucker	7:00 A. M.-12:00 Noon and 1:00 P. M. to 4:00 P. M."

The Carrier argues that the rule is not applicable because the employes are not in the same group within the purview of Rule 1. To sustain this argument would inject limitations into the rule which the parties themselves did not see fit to include. Such an interpretation would defeat the obvious purpose of the rule. All the employes for whom the claim is made are within the scope of the agreement and all are equally protected by the rule.

The Carrier suggests that there are two different stations at Kingsville, i. e., the passenger depot and the freight depot. But it appears that the employes involved perform work, at one time or another, in both stations. Practically the two depots are operated as one unit. See Award 1395.

When the parties were negotiating the agreement the General Chairman agreed in writing that paragraph (b) should not be applied to positions where the starting time had theretofore been between 12:00 midnight and 5:00 A. M. The parties agree that this proposal was not only not accepted by the Carrier, but repudiated before the agreement was finally consummated. The Carrier, however, contends that it was revived and became a part of the agreement when finally adopted. This contention cannot be sustained. When the negotiations reached the final stage the General Chairman of the Organization expressly limited the exception to two particular positions neither of which are involved in this dispute.

The Board is of the opinion that there has been a clear violation of Rule 42. Our conclusion finds ample support in Awards 685, 1395, and 1591.

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 carrier violated Rule 42 of the agreement.

AWARD

Claim sustained as for violation of Rule 42; denied as to alleged violation of Rule 40.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of December, 1941.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 1641
DOCKET CL-1665**

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

NAME OF CARRIER: Gulf Coast Lines, International-Great Northern Rail-
road 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 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:

Paragraph (b) of the claim is specific: "That the station employes be paid on an overtime and call basis . . . for all time in **advance of the hours specified in Rule 42.**"

The award sustains the claim without qualification.

Referee Bruce Blake, who sat with the Division, as a member, when Award 1641 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 25th day of March, 1942.