

Award No. 1711
Docket No. CL-1701

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Sharpe, 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 the Carrier violated the Clerks' Agreement by the following arbitrary actions:

(a) By bulletining positions in one seniority district to employees in another seniority district. And

(b) By assigning employees from one seniority district to positions in another seniority district where they hold no seniority rights. And

(c) By refusing to assign the positions to employees who hold seniority rights in the seniority district where the positions and work are located. And

(d) By arbitrarily transferring work from one seniority district to another. And

(e) Claim that the carrier be required to correct the agreement violation by restoring the work and the employees to the seniority districts from which transferred. Also

(f) Claim that all employees involved in or affected by the agreement violation be reimbursed for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: Under the rules of the current agreement between the carrier and the Brotherhood seniority districts with clearly defined limits are set up, and, among others, the following seniority districts are specifically provided for:

OFFICE	SENIORITY DISTRICT
General Auditor (Houston)	District Number 1
Auditor Freight & Passenger Receipts (Kingsville)	District Number 3
Superintendent, Gulf Coast Lines	District Number 21
Mechanical Stores Department (Entire Gulf Coast Lines)	District Number 23

At the first conference with Mr. W. G. Rupp, Mediator, question was asked as to what dispute between the Carrier and the Organization was being handled by the Mediation Board. Mr. Rupp referred to the telegrams which had been transmitted to the General Manager of the Carrier by the Secretary of the Mediation Board and stated that the telegrams indicated the subject of the dispute which had been referred to the Board, which was protection of the employees whose jobs might be affected by the establishment of machine bureaus.

Inasmuch as the employees only submitted to the Board their proposal in connection with the job protection feature, it is very evident that no controversy existed with respect to the rates of pay and assignment of the work as proposed by the representatives of the Organization and after the withdrawal of the dispute with respect to the proposal of the employees as to job protection from the Mediation Board, the Carrier considered that part of the controversy was closed and established the machine bureaus in accordance with the acceptance of the employees' proposal as indicated in the General Manager's letter to the General Chairman of the Organization dated November 12, 1940.

The rates of pay for the positions in the machine bureaus were established in accordance with the proposal of the Organization and accepted by the Carrier. The assignment of work to the machine bureaus and to the employees in the seniority districts affected was carried out in accordance with the proposal of the employees, which was accepted by the Carrier, and the positions were bulletined in accordance with the rules of the Agreement.

The setup of the claim of the employees consists of six items, none of which indicates that the Organization has made any claim that the rates of pay established for the positions in the machine bureaus are in controversy, yet the same letter, which accepted the rates of pay as proposed by the employees, accepted the other proposals of the employees as to the assignment of the work.

The Carrier contends that the transfer of the work from the seniority districts and the assignment of the same to the machine bureaus, as well as the assignment of the employees, are in accordance with the proposals made by the representatives of the Organization and the acceptance by the representatives of the Carrier.

As to Item (f), of employees' claim submitted to your Board: The Carrier has not been presented with any specific claims by employees involved in or affected by the alleged agreement violation that they be reimbursed for all losses sustained and contends that this item of the claim is not properly before your Honorable Board and should not be given consideration until specific claims are submitted by employees for losses sustained, the merits of which claims can then be passed upon.

OPINION OF BOARD: The controlling facts in this case are not in dispute. They show that seniority districts for the employees and positions here involved were established by agreement between the parties under the provisions of Rule 5 as follows: General Auditor (Houston) No. 1; General Auditor & Auditor Disbursements (Palestine) No. 2; Auditor Freight & Passenger Receipts (Kingsville) No. 3; Auditor Freight & Passenger Receipts (Palestine) No. 4; Asst. General Manager & Superintendents (Entire I. G. N.) No. 19; Superintendent, Gulf Coast Lines, No. 21; Mechanical Stores Department (Entire I. G. N.) No. 22; and Mechanical Stores Department (Entire Gulf Coast Lines) No. 23.

That on April 8, 1941 and on subsequent dates, positions were created in Seniority District No. 2 (Palestine), were bulletined to and bids accepted from employees whose seniority rights are confined exclusively, under Rule 5, to Seniority District Nos. 4, 19, and 22, the latter two being system districts;

that on April 17, 1941 and subsequent dates employes who hold no seniority rights in District No. 2 were assigned to these positions, and bids of the employes who hold seniority rights in District No. 2 were disregarded.

That on April 8, 1941 and on subsequent dates positions were created in District No. 3 (Kingsville), and positions were bulletined to and bids were accepted from employes whose seniority rights are confined exclusively to District Nos. 1 (Houston), 21 and 23, the latter two being division or system districts; and that on April 8, 1941 a position was created in District No. 1 (Houston), was bulletined by the Auditor of Freight and Passenger Receipts at Kingsville (District No. 1), but was bulletined to employes in District Nos. 1, 3 (Kingsville), 21 and 23, the latter two being division or system districts. That effective with the termination of assignment on April 18, 1941 the position of key-punch operator in District No. 4 was discontinued and a portion of the work transferred to District No. 2; that effective with the termination of assignment on April 30, 1941 the position of clerk-statistics, District No. 4 was discontinued and all the duties of the position were transferred to District No. 2.

That effective with the termination of assignment on May 5, 1941 the positions of assistant timekeepers, general clerk and comptometer operator in District No. 19 were discontinued and concurrently therewith the train and enginemen's timekeeping, payroll deductions, and compilation of force report data were transferred to District No. 2; that effective with the termination of the assignment on May 10, 1941 of the positions of assistant timekeepers, and steno-clerk in District No. 21 were discontinued and concurrently therewith the train and enginemen's timekeeping, payroll deductions, and compilation of force report data were transferred to District No. 2.

Additional facts leading up to the present controversy may be stated as follows: A Clerks' Agreement effective April 1, 1939 was in effect until October 31, 1940 when it was superseded by an agreement effective November 1, 1940. On July 25, 1940 the parties involved herein began a series of negotiations regarding the installation of machine systems in auditing offices. On the above date the Assistant General Manager advised the General Chairman of proposed:

- (1) installation of machine system in auditing offices at three points.
- (2) transfer of time keeping and accounting work from division offices and mechanical department to auditors' offices.
- (3) consolidation of certain audit office work at Palestine.
- (4) contemplated reduction of force in three offices.

On August 29, 1940 the General Chairman submitted the following proposal:

"On or about October 1, 1940 the carrier proposes to establish a 'Centralized Machine Bureau' at Palestine, Houston and Kingsville, Texas, to perform certain work that is now performed in several different seniority districts, and the purpose of this agreement is to provide for the transfer of certain work from the different seniority districts into the 'Centralized Machine Bureaus,' and to afford certain guarantees to the employes affected by the formation of the 'Centralized Machine Bureaus.'

In order to carry out the purposes of this agreement, it is hereby agreed that:

1. The formation of 'Centralized Machine Bureaus' and the installation of the machines shall not operate to reduce the number of positions in existence on July 1, 1940, except as vacancies may occur through natural causes, such as deaths, resignations and retirements.

2. No employe shall be in a worse position with respect to compensation or working conditions than he was on July 1, 1940.

3. The transfer of work, the installation of machines or change in the manner of performing the work shall not operate to reduce the rate of pay previously paid for the work.

4. The carrier shall arrange for instructions to be given to all employes who desire to learn the work in the 'Centralized Machine Bureaus.' Such employes shall be paid the full rate of their position for all time devoted to learning such work.

5. There shall not be any Gulf Coast Lines work performed on the International-Great Northern Railroad and no International-Great Northern Railroad work shall be performed on the Gulf Coast Lines.

6. There is attached hereto, and made a part of this agreement, a detailed statement of the work to be performed in each 'Centralized Machine Bureau' and no additional work will be transferred except by mutual agreement.

7. New positions or vacancies in each 'Centralized Machine Bureau' will be bulletined to all seniority districts from which work was transferred and the senior employe from any of those districts bidding on the position will be assigned. Such employe shall retain and continue to accumulate seniority in their original seniority district.

8. Employes in the 'Centralized Machine Bureau' shall be subject to displacement by any senior employe from any of the seniority districts from which work has been transferred. Such displaced employes may exercise their seniority in their original seniority district or in the 'Centralized Machine Bureau.'

9. This memorandum of agreement shall be considered supplemental to and modifying the provisions of the working agreement dated.....between the parties signatory hereto only to the extent indicated herein; with these exceptions, all other rules of the working agreement dated.....fully apply."

This proposal was not accepted by the Carrier.

Sometime between October 16 and 21, 1940 the Committee submitted a second proposal which contained an agreement of proposed rates, assignment of employes affected in seniority districts involved, and "job protection." The Carrier signified its intention of agreeing to the proposed rates for employes affected in seniority districts but rejected the proposal relating to "job protection."

Shortly thereafter the Committee submitted its third proposal and on November 12, 1940 the General Manager addressed a letter to the General Chairman agreeing to certain provisions in the proposal but rejected the guarantees to the employes affected by the change and other provisions relating to "job protection." The Carrier's letter also contained a statement that arrangements were to be made to establish bureaus effective December 1, 1940.

On November 29, 1940 the Organization invoked mediation on the "job protection" proposal. The Carrier then cancelled the establishment of the proposed bureaus which was set for December 1, 1940 but on April 7, 1941 the Carrier established the three bureaus, assigning work and fixing rates of pay in accordance with certain of the provisions of the Employees' third proposal.

It is the position of the Carrier that the parties are in agreement as to rates and assignment by reason of its acceptance of such portions of the Employees' third proposal but are in disagreement on "job protection," which is a matter not covered by agreement rule.

It is the position of the Employees that until all of the provisions mentioned in the third proposal were accepted by the Carrier no new agreement between the parties existed and that all of the transfers of the work from one seniority district to another were arbitrarily made by the Carrier.

We are in accord with the position of the Employees that the negotiations surrounding the third proposal do not constitute an agreement between the parties. It is fundamental law that a proposal must be accepted in its entirety in order to constitute a contract or agreement. The acceptance of a part of the provisions by the Carrier and a rejection of other provisions does not constitute an agreement of those provisions accepted.

Negotiations relative to this claim began in July 1940. Rule 5 established the seniority districts here involved. These districts and the rights of the employees thereunder could not be altered or changed except by agreement of the parties in the same manner in which the districts were originally established.

In Award 99 it was held:

"But seniority districts once established by understanding or agreement can only be changed by agreement between the parties."

See also the following awards: 198, 199, 1612, 1642, and 1685.

Rule 71 provides that the current agreement would remain in effect for one year and thereafter until changed as provided for therein or under the provisions of the Railway Labor Act. The Carrier's action complained of here was taken in April and May 1941 within the one year mentioned in Rule 71. Such action on the part of the Carrier was contrary to the above mentioned rule. The Carrier relies upon Rule 51 and urges that the provisions of this rule contemplate the installation and use of machines for the handling of work and for negotiation of rates of pay and assignment of work. The Carrier's interpretation of Rule 51 might be sound if it were not for Rule 71 which supersedes all rules, agreements and understandings made prior to October 13, 1940 and in conflict therewith. This rule provides that the current agreement shall remain in effect for a period of one year and thereafter until changes are made as provided in the rule or under the provisions of the Railway Labor Act.

The record shows that the Carrier violated the agreement of the parties within the year as mentioned in Rule 71.

The Carrier also urges that it has not been presented with any specific claims by employees involved in or affected by the alleged agreement violation and that this item of the claim should not be given consideration until specific claims are submitted by employees for losses sustained. We are not in accord with this contention. See Award 1646. The record sustains the claim of the Employees that the Carrier violated the current agreement between the parties.

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 carrier violated the current agreement as claimed and proved by the petitioner.

AWARD

Claim (a to f, inclusive) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1942.

Dissent to Award No. 1711, Docket No. CL-1701

The implications, if not the direct assertions, of the Opinion of Board in this case are that violations of the rules of an Agreement constitute in effect changes of such rules and that such violations, i. e., Carrier's actions found to be in violation of rules, are violations of the terminating rule of the agreement.

That theme is carried to its furthest extreme in the third from last paragraph of the Opinion of Board in respect to Rule 71, the terminating rule of the agreement. In that paragraph, it is declared that the Carrier's action complained of here was contrary to the above mentioned rule (Rule 71). The paragraph continues by reference to Rule 51 (which, incidentally, was of direct application to this circumstance) by remarking that the Carrier's interpretation of that rule might be sound "if it were not for Rule 71 which supersedes all rules, agreements, and understandings made prior to October 13, 1940, and in conflict therewith." The assertion that Rule 71 supersedes all rules, agreements, etc., as there made, is an assertion of meaning to this terminating rule which confounds the understanding had of such terminating rule, the character of which appears in practically all agreements between all crafts and all Carriers in the country, and is universally understood by employes and Carriers alike on each and all of those properties to be contrary to that assertion. In fact, Rule 71 by its own statement contradicts the assertion that "Rule 71 supersedes all rules, agreements, etc." What Rule 71 says in that respect is "this agreement * * * superseding all other rules, agreements, etc." (Underscoring added.)

Nothing could be more disturbing in the relations between parties to this agreement, and in its implication to the relations between parties to all of these labor agreements, than an attempt to give the understanding as to the meaning of this terminating rule, Rule 71, which the assertion of this Opinion of Board gives.

(s) R. H. Allison
(s) A. H. Jones
(s) C. P. Dugan
(s) R. F. Ray
(s) C. C. Cook

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 1711
DOCKET CL-1701**

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 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:

Question: Is Mrs. Ethel Walker entitled to additional compensation from June 9, 1941 to June 1, 1942?

Answer: The award sustained all items of the claim of Mrs. Walker and she should be compensated as though she had been assigned to the position as of the date of June 9, 1941.

Question: Should M. A. Alley be reimbursed in the amount of \$63.00 for losses he is alleged to have sustained by reason of change in place of residence?

Answer: The award provided that Mr. Alley was entitled to all losses sustained. He is therefore entitled to the amount expended in the cost of moving.

Referee Edward M. Sharpe, who sat with the Division, as a member, when Award 1711 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 28th day of May, 1943.