

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:

(a) The carrier violated the Clerks' Agreement by paying Baggage Porter E. V. Rose at San Antonio overtime at the rate of \$.4975 per hour. Also

(b) Claim that Baggage Porter E. V. Rose be paid the difference between \$.4975 and the correct overtime rate of \$.54 for all overtime worked.

**EMPLOYEES' STATEMENT OF FACTS:** E. V. Rose is employed at San Antonio, Texas as Baggage Porter and is paid on the basis of 36¢ per hour.

On April 2, 1941 Mr. Rose worked one hour and thirty minutes overtime and was paid \$.4975 per hour for the overtime.

All overtime worked by Mr. Rose on other dates has also been paid for at the rate of \$.4975 per hour.

**POSITION OF EMPLOYEES:** The employees quote paragraph (a) of Rule 37 of our current agreement:

"Rule 37. Day's Work and Overtime.

"(a) Except as otherwise provided in this rule, eight (8) consecutive hours or less, exclusive of the meal period shall constitute a day's work for which eight (8) hours pay will be allowed. Time in excess of that on any day will be considered as overtime and paid on the minute basis at the rate of time and one-half."

The above rule is plain in its requirements. The rule states just as clearly as it can possibly be stated that time in excess of eight hours will be paid for "at the rate of time and one-half."

The Baggage Porter is paid on the basis of 36¢ per hour in accordance with the Wage Order issued under the Fair Labor Standards Act, yet the carrier uses a rate of pay that is no longer legal in computing the overtime rate.

When the Wage Hour Administrator issued the Wage Order setting a minimum of 36¢ per hour, all rates below 36¢ per hour became illegal and the carrier increased those rates to 36¢ per hour.

Inasmuch as the legal rate of pay for the Baggage Porter at San Antonio is 36¢ per hour, it follows that the overtime rate, under Rule 37, must be one and one-half times 36¢, or 54¢ per hour.

Your Honorable Board is requested to sustain our claim.

**CARRIER'S STATEMENT OF FACTS:** On April 2, 1941, E. V. Rose, employed as Baggage Porter at San Antonio, Texas, worked 1-hour and 30 minutes overtime, for which he was paid 49.75¢ per hour, which is the overtime rate established for the position by Agreement with the Clerks' Organization. On May 12, 1941, the General Chairman of the Clerks' Organization filed claim for payment at the rate of 54¢ per hour, basing same on the following statement contained in letter to General Manager of Carrier:

"The hourly rate of this employe is 36¢ per hour as contained in the Wage Order under the Fair Labor Standards Act and Rule 37 of our Agreement requires that all overtime be paid at the rate of time and one-half; therefore, failure to pay for this overtime at the rate of 54¢ per hour is in violation of the Agreement."

**POSITION OF CARRIER:** Section (a) of Rule 37 of current Agreement with the Brotherhood of Railway Clerks reads as follows:

"(a) Except as otherwise provided in this rule, eight (8) consecutive hours or less, exclusive of the meal period shall constitute a day's work for which eight (8) hours pay will be allowed. Time in excess of that on any day will be considered as overtime and paid on the minute basis at the rate of time and one-half."

The agreed to basic daily rate of Baggage Porter Rose is \$2.65, pro rata hourly rate 33.125 cents, overtime rate 49.75 cents. The minimum hourly rate established under the Fair Labor Standards Act is 36 cents. Mr. Rose was paid at a rate in excess of that established under the Fair Labor Standards Act. The application of rates of pay established under the Fair Labor Standards Act is not by agreement with the Clerks' Organization.

It is the contention of the Carrier that there has been no violation of the Clerks' Agreement as Mr. Rose has been paid as provided for in Rule 37 (a), quoted above.

**OPINION OF BOARD:** The controlling facts in this case are not in dispute; briefly stated they are: Effective March 1, 1941, the Wage Order issued by the Wage and Hour Administrator under the provisions of the Fair Labor Standards Act of 1938, provided that, "Wages at a rate of not less than 36¢ an hour shall be paid, \* \* \*." On April 2, 1941 porter E. V. Rose worked one hour and thirty minutes overtime and was paid \$.4975 per hour therefor. The question is, was Rose entitled, under Rule 37 of the current agreement to be paid for the overtime worked on the basis of the rate of 36¢ per hour, the rate fixed under the Fair Labor Standards Act of 1938, or as he was paid, which the Carrier contends was the agreed to rate prior to the enactment of the Fair Labor Standards Act?

The controlling rules of the current agreement read:

"Rule 1 (a), Group 2: All other office, station and store employes, including office boys, messengers, train announcers, gatemen, baggage and parcel room employes, train and engine crew callers, telephone switchboard operators, elevator operators, office, station, warehouse and store watchmen, janitors, and all other employes performing similar work."

"Rule 48 (a): Employees covered by groups (1) and (2), Rule 1, heretofore paid on a monthly, weekly or hourly basis, shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect."

"Rule 37 (a): Except as otherwise provided in this rule, eight (8) consecutive hours, or less, exclusive of the meal period shall constitute a day's work for which eight (8) hours pay will be allowed. Time in excess of that on any day will be considered as overtime and paid on the minute basis at the rate of time and one-half."

It is the position of the Employees that the contract rate was superseded by the rate of 36¢ per hour established by the Fair Labor Standards Act; and that the overtime worked on April 2, 1941 and other days subsequent to March 1, 1941 entitles the employe, under the provisions of Rule 37, to time and one-half the rate of 36¢ per hour, or 54¢ per hour.

It is the position of the Carrier that the employe should be paid at the rate of 36¢ per hour for so-called straight time as is provided by the Fair Labor Standards Act and a rate of 33¼¢ per hour for overtime as is provided in the agreement.

In Award 1699 we held that:

"... the Federal Act modified the agreement effective August 1, 1937 for persons who prior to that date were receiving a wage of less than 36¢ per hour."

The opinion in the above award is controlling in the instant case. The wage of the employe in this case for overtime should be based on the modified agreement or at the rate of 54¢ per hour for all overtime worked since March 1, 1941.

**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 employe involved in this dispute are respectively carrier and employe 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 current agreement was violated by the carrier as contended by the petitioner.

#### AWARD

Claim (a and b) 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.