Award No. 1810
Docket No. CL-1661

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 is violating the Clerks' Agreement by failing and refusing to compensate porter Arnold Zarate employed at Rio Grande City Texas, on the basis of eight (8) hours pay each day at the regular and legal rate, and

(b) Claim that porter Zarate shall now be reimbursed for all wage losses sustained retroactive to March 14, 1941.

EMPLOYES' STATEMENT OF FACTS: Prior to March 14, 1941 the porter at Rio Grande City, Texas was assigned to work eight (8) hours per day, and was paid $2.40 per day.

Effective March 14, 1941 his hours were reduced so that he now works and is paid for only six hours and twelve minutes per day.

POSITION OF EMPLOYES: Rule 37 of our current rules agreement reads as follows:

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.

(b) Hourly rated employes who report for work will be paid a minimum of four (4) hours pay at pro rata rates. If held on duty more than four (4) hours after starting time eight (8) hours pay shall be allowed. This paragraph shall not operate to reduce the number of full time positions now in existence."

9 for minimum wage rates in the railroad carrier industry, Wage Order, effective March 1, 1941, Section 591.2, Wage Rates, Paragraph (b), reads as follows:

> "Wages at a rate of not less than 33 cents an hour shall be paid under Section 6 of the Act by every employer to each of his employes in the Short Line Division of the Railroad Carrier Industry who is engaged in commerce or in the production of goods for commerce."

The Carrier, under Rule 37, Section (a), of the Clerks' Agreement, as quoted above, is paying the Porter at Rio Grande City $2.05 per day, which is the agreed to rate between the Carrier and the Clerks' Organization for eight consecutive hours or less exclusive of the meal period to constitute a day's work for which eight hours' pay is allowed. The Carrier is paying the Porter at Rio Grande City $2.05 per day for six hours and 12 minutes actually worked at the rate of 33¢ per hour, as provided in Section 591.2, Paragraph (b), of Wage Order effective March 1, 1941, quoted above.

The attention of your Honorable Board is called to Award No. 1228, Docket No. MW-1228, in dispute between Brotherhood of Maintenance of Way Employes and Mobile & Ohio Railroad, dated November 14, 1940, and Award No. 1229, Docket MW-1302, in dispute between Brotherhood of Maintenance of Way Employes and Chicago, Burlington & Quincy Railroad Company, dated November 14, 1940, which awards uphold the position of the Carrier in this case.

It is the contention of the carrier that inasmuch as the Porter at Rio Grande City is being paid at the daily rate which has been agreed to between the Carrier and the Clerks' Organization and also the rate per hour for the hours actually worked as provided for in Wage Order promulgated by the Wage and Hour Division of the U. S. Department of Labor, effective March 1, 1941, that the Agreement with the Clerks' Organization has not been violated and neither have the provisions of the Fair Labor Standards Act been violated. Your Honorable Board is requested to so decide.

OPINION OF BOARD: The issue in this case is the same as in Docket CL-1616, Award No. 1803, and in CL-1617. Award No. 1804. Rule 45 of the agreement there before us reads as follows:

> "Except as otherwise provided in this Article, eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

Rule 37 of the agreement between the parties to this case says in part:

> "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. * * *"

The words "for which eight (8) hours pay will be allowed" are a significant addition to the rule. The agreement which incorporates this rule became effective November 1, 1940. It superseded a previous agreement effective April 1, 1939 in which this rule was the same as Rule 45 above. It is not unreasonable to assume that these words were added because the question of its interpretation had been raised by other carriers. We view this additional phrasing, not as changing the meaning of the rule as it was in the previous agreement, but as an interpretation of it.

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 Carrier violated the provisions of Rule 37.

AWARD

Claims (a) and (b) are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1942.