

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Michael L. Fansler, 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 at the Corpus Christi Yard office by refusing to classify and pay the 2:00 P. M. Yard Clerk as a Line Desk Clerk. Also

(b) Claim that the Yard Clerk's position in question be classified and paid as a Line Desk Clerk retroactive to the date of this claim, November 16, 1940.

**EMPLOYEES' STATEMENT OF FACTS:** On November 16, 1940 claim was filed with the carrier requesting that the Yard Clerk be classified and paid as a Line Desk Clerk in conformity with the duties and responsibilities assigned to and performed by the position.

As a result of this claim a joint survey and report was made on May 22, 1941, which disclosed that a majority of the work on the position was Line Desk Clerk's work.

**POSITION OF EMPLOYEES:** The agreed upon rates of pay for Line Desk Clerks at Corpus Christi at the time this claim was filed was \$5.65 per day, and for Yard Clerks \$5.10 per day, subsequently being increased .80¢ per day.

The following rules are quoted in support of this claim:

Rule 49.

"Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

Rule 50.

"(a) Employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such position or performing such work; employees temporarily assigned to lower rated positions or work shall not have their rates reduced.

which the General Manager replied on January 14th that he did not care to join him in submitting the case to your Honorable Board.

**POSITION OF CARRIER:** As indicated in the Carrier's statement of facts, prior to July 15, 1940, there was only one clerk employed in the yard office at Corpus Christi, who performed all of the duties required of the position regardless of whether performed in the office, or in the yard, such as checking and weighing cars and taking seals on cars in trains arriving on his shift.

The position of yard clerk which was established on May 20, 1936, with assigned hours from 2:00 P. M. to 10:00 P. M., was assigned to perform the duties as indicated in Carrier's Exhibit No. 1, which duties he has been performing since the position was established. While this clerk performs some inside work, at the same time the preponderance of his work is that which is considered applicable to a yard clerk, and there was no question as to the proper classification and rate of pay so far as the Carrier's records are concerned, prior to the time the General Chairman wrote the Superintendent, requesting a joint check as indicated in the Carrier's statement of facts.

It is the contention of the Carrier that the preponderance of the work being performed by the clerk, the subject of this dispute, is that which comes within the strict classification of a yard clerk and that very little of his time is consumed in performing the work which the representative of the Organization claims is that which should be performed by a line desk clerk, in view of which fact the clerk is properly classified as a yard clerk and is receiving the rate of pay which has been established as applicable to the position by agreement with the Organization.

Your Honorable Board is respectfully petitioned to deny the claim.

**OPINION OF BOARD:** In the opinion of this Board in Award No. 1710 (Docket C.L.-1664) it is said that:

"It is not disputed that the services performed by Line Desk Clerks and Yard Clerks are interchangeable."

And yet it is clear that they are different positions rated differently as to pay. It appears that when there is no Yard Clerk on duty a Line Desk Clerk performs all duties which would fall to a Yard Clerk if there were one on duty, and similarly when there is no Line Desk Clerk on duty all duties are performed by a Yard Clerk. This was the practice found to exist in Award No. 1710 and it is the practice in the instant case. The propriety of this practice seems not to have been questioned there, but here it presents the only question.

The carrier asserts that there has never been any strict line of demarcation between the work of the two positions, that when the clerical work is not heavy it is all done by a Yard Clerk and when work increases so that another clerk is required the position of Line Desk Clerk is created. It seems agreed that when both a Line Desk Clerk and a Yard Clerk are on duty the former is engaged principally in inside work and the latter principally outside. Senior Yard Clerk would perhaps be a more appropriate name than Line Desk Clerk.

It is said in the opinion in Award No. 1710 that:

"It is the position of the employees that the fact that the positions on the first and third tricks were classified as Line Desk Clerks while the position on the second trick was classified as a Yard Clerk does not alter the application of the rule for the reason that the character of the service performed is similar or interchangeable."

It was concluded that:

"It is not disputed that the services performed by Line Desk Clerks and Yard Clerks are interchangeable."

And that:

"The fact that the positions on the first and third trick were classified as Line Desk Clerks, whereas the position on the second trick, the one in question, was classified as a Yard Clerk does not alter the application of Rule 40. This rule has to do with the character of service performed, not the title the carrier may elect to give the positions."

The Board adopted the employees' view that:

"The service performed is similar and interchangeable."

And that they were positions:

"Where regular operations need to be performed in rotation throughout the twenty-four hour period."

Prior to 1934 all of the services involved were performed by one Yard Clerk; from July, 1934 to May, 1935, by two Yard Clerks; from May, 1935, to May, 1936, by one Yard Clerk and one Line Desk Clerk; from May, 1936 to July, 1940, by two Yard Clerks and one Line Desk Clerk; and since July, 1940, by two Yard Clerks and two Line Desk Clerks.

The Yard Clerk position here involved has been performing the same duties since 1936 when the position was established.

It may reasonably be inferred that when there was only one Line Desk Clerk the work was done by one or both of the Yard Clerks when he was off duty.

If the first Line Desk Clerk had been called Senior Yard Clerk and given a higher rate of pay, would it have been a violation of the agreement not to have increased the pay of the Yard Clerks doing interchangeable work? We find no rule that would be violated.

It has been repeatedly held that it is the character of the work and not the name of the position that is controlling.

We conclude that as contended by the employees and held by this Board the work of the three positions involved is continuous and interchangeable; that it is work that has always been done by Yard Clerks, that Line Desk Clerks are merely Senior Yard Clerks who receive more pay and are preferred in the assignment of work when on duty with a Yard Clerk.

We find nothing in the agreement requiring that a Yard Clerk on duty when there is no Line Desk Clerk on duty must be paid at the Line Desk Clerk 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 employe involved are 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 there is no violation of the agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 8th day of October, 1942.