

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 by paying monthly rates of pay to employes holding certain positions listed in paragraph (c) of Rule 7. Also

(b) Claim that the carrier be required to convert the monthly rates of pay to daily rates of pay.

EMPLOYES' STATEMENT OF FACTS: The current agreement between the carrier and the Brotherhood requires that all employes be paid on a daily basis, except those designated in Group 3 of Rule 1, who are defined as "Laborers employed in and around stations, stores and warehouses."

The carrier refuses to pay daily rates of pay to the employes holding the positions listed in paragraph (c) of Rule 7, and which are followed by an asterisk, and continues to pay them on a monthly basis.

Positions listed in paragraph (c) of Rule 7 that are not followed by an asterisk are paid on a daily basis.

POSITION OF EMPLOYES: The employes quote the following rules in support of this claim:

Rule 48.

"(a) Employes 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.

"(b) Nothing herein shall be construed to permit the reduction of days of the employes covered by this rule below six (6) per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

tive. During the time that the negotiations were being conducted which resulted in the establishment of rules and working conditions as contained in the agreement of November 1, 1940, the Organization proposed and insisted that all employees coming under the scope of the Clerks' agreement who were then paid on a daily basis be changed to a monthly basis. The only discussion which took place during the negotiations in regard to change in basis of pay was with respect to those employees coming under the scope of the Clerks' agreement other than those on a monthly basis. The agreement, however, which became effective November 1, 1940, did not make any change in the rules as contained in the preceding agreement affecting the basis upon which the employees covered by the agreement were being paid; that is, on a monthly, daily or hourly basis. The representatives of the Employees also endeavored to secure a change in the agreement of Nov. 1, 1940, which would have the effect of placing the employees listed in Section (c) of Rule 7 under all of the rules of the agreement with the exception that the Carrier would be privileged to select employees to fill the positions in case of a vacancy without regard to seniority, with the understanding that the employees covered by the agreement would be given preference in the filling of the positions, stating that the displacement and assignment rules of the agreement would not be affected, inasmuch as seniority would not be taken into consideration in the filling of the positions. The representatives of the Carrier, however, insisted that there were certain positions to which the hours of service rule could not be applied by reason of the duties assigned and required of the employees filling said positions. It was then agreed that each position would be given consideration, and such positions would be followed with an asterisk, and that the employees assigned to said positions would be excepted from the overtime and called rules of the agreement. That was done, with a full understanding that the employees assigned to the positions when required to work in excess of eight hours per day would not be paid overtime, and in case they were called to perform service on Sundays and holidays the employees would not receive additional payment to that regularly established for the positions.

There was no discussion or contention on the part of the committee representing the Organization that the monthly rated employees listed under Section (c) of Rule 7, and which were also listed in the agreement of April 1, 1939, as being excepted from the promotion, assignment, displacement and hours of service rule, and whose salary was fixed on a monthly basis, would be changed to a daily basis; and as heretofore stated, the first information that the Carrier had that there was any contention on the part of the Organization that the employees whose salary was established on a monthly basis, should be changed to that of a daily basis, was on receipt of letter to General Manager, heretofore referred to. The question by a disinterested party would naturally arise as to why certain positions would be set apart in a rule from other positions in the agreement, separating them as to class from other positions included in the scope of the agreement. There was certainly a reason for such action on the part of the interested parties, and the Carrier has endeavored to indicate to your Honorable Board the reasons therefor.

It is the contention of the Carrier that upon the evidence herein submitted under the agreement with the Organization with respect to rates of pay that the claim of the Organization that the monthly rated employees listed in Section (c) of Rule 7 should be changed to a daily basis, should be denied.

OPINION OF BOARD: Rule 48 (a) provides that employees covered by Groups (1) and (2), Rule 1 theretofore paid on a monthly basis shall be paid on a daily basis.

Rule 7 (a) excepts the positions in Paragraph (c) of the rule from the Seniority Rule.

Rule 7 (e) excepts the listed positions that are followed by an asterisk (*) from the overtime and call rules.

All positions listed and followed by an asterisk (*) are covered by groups (1) and (2) of Rule 1, and they were formerly paid on a monthly basis.

Thus the express language of the agreement includes the positions listed and followed by an asterisk (*) among those thereafter to be paid on a daily basis. These positions are expressly excepted from the seniority call and overtime rules but they are not expressly excepted from the daily pay rule.

It is a recognized rule in the construction of contracts that where one or more exceptions to a provision are expressed no other or further exceptions will be implied.

Rule 71 (a) provides that the agreement shall supersede "all other rules, agreements and understandings."

We find the agreement clear and unambiguous.

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 carriers and the employees involved in this dispute are respectively carriers 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 contended by the petitioner.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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