

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Elwyn R. Shaw, 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 RAILROAD COMPANY**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The position advertised in Bulletin No. 105 of September 23, 1941, in the Palestine, Texas Yard Office should be classified as a Car Clerk with a rate of \$6.44 per day (plus subsequent wage increases). Also

(b) Claim that the rate of \$6.44 per day be applied to the position retroactive to October 9, 1941, the date the position was actually restored. Also

(c) Claim that all employees involved in or affected by the carrier's refusal to properly classify and rate the position be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: For twenty years or more there was a position in the Palestine Yard Office classified and rated as a Car Clerk.

The position was assigned on a 365 day annual basis with a rate of \$5.40 per day.

In March 1939 the carrier reduced the annual assignment of the Car Clerk from 365 days to 306 days with a corresponding reduction in the earnings of the position.

Claim was filed because of the carrier's action, with the result the annual assignment was restored and the employee paid for losses sustained.

On July 5, 1939 the carrier abolished the position of Car Clerk. At the time the position was abolished the following duties were assigned to and performed by the Car Clerk:

Check yards and industries,
Compile yard report,
Compile fuel oil report,
Weigh cars.

Effective October 9, 1941 the position was restored under the title of Yard Clerk, with the annual assignment reduced to 306 days and the rate of pay reduced to \$4.95 per day.

"The understanding set out in your letter quoted above is correct with the exception that it was understood that the clerical positions at the Beaumont Yard Office will be assigned in accordance with paragraph (a) of Rule 42.

"When the additional position is put on at Beaumont and hours assigned in accordance with paragraph (a), Rule 42, you may consider the settlement as set out in your letter of May 21 as disposing of the entire question.

"I am giving Mr. Kennedy a copy of this letter with the request that he advise me the names of the individuals and amount of back pay allowed under this settlement."

The circumstances connected with the above case, as outlined by the Carrier, prove conclusively that the checking of yards and compiling of Form 6793 are Yard Clerk's work and so recognized by the Organization.

The compiling of fuel oil report Form 1849 Joint is not confined to any one class of employees on the Railroad. Investigation develops the fact that at Houston the report is compiled by the Order Clerk located in the Yard Office; at San Antonio, by the Report Clerk located in the Yard Office; and at Kingsville, by a Yard Clerk. It is a very simple form and requires a very small amount of time to compile. The Carrier shows Form 1849 Joint, as its Exhibit No. 1, which indicates that the report is to be made daily of Cars of Company Oil Received during past 24 hours; Cars of Company Oil Forwarded past 24 hours; Cars Company Oil Unloaded past 24 hours; Cars Company Oil on Hand; Empty Leased or System Tanks Forwarded past 24 hours; and Empty Leased or System Tanks on Hand. It is a somewhat similar report to Yard Report—Form 6793—a blank form of which is shown as Carrier's Exhibit No. 2, which form is compiled by Yard Clerks at the various points where the report is made, as indicated above, and which is recognized as Yard Clerk's work. Form 1849 Joint referred to above is a copy of the report which was made on February 18, 1942. February 18th was selected after a check of that month's reports because of the fact that there were listed more cars on the report on that date than any other day during that month.

The compilation of Form 1849 Joint, Fuel Report, requires only one sheet daily, while a check of the month of February, 1942, indicates that the average number of sheets required to compile Form 6793 at Palestine is in excess of eleven per day. The data used in compilation of Form 1849 Joint is secured in the same manner that the data used in the compilation of Form 6793 is secured.

For some time prior to the time the Car Clerk's position was abolished, there was no Yard Clerk employed in Palestine Yard. The Car Clerk, in addition to compiling the Fuel Report, also performed the duties of checking the yard and industries and compiled the Yard Report—Form 6793—which is recognized strictly as Yard Clerk's work. He also kept a check of all tracks for the information of the Yardmaster and the Engine Foreman and performed any other duties assigned to him by the Yardmaster and Chief Yard Clerk and weighed cars, which latter duties the employe now assigned as Yard Clerk is not required to perform.

It is the contention of the Carrier that the evidence herein submitted proves conclusively that the Yard Clerk's position, which was established on October 9, 1941, is not the same position which was classified as a Car Clerk, which was abolished on July 5, 1939; that the duties assigned to the position of Yard Clerk are strictly Yard Clerk's work and not those devolving upon a Car Clerk, in view of which your Honorable Board is respectfully petitioned to deny the claim of the employees.

OPINION OF BOARD: For many years prior to July 5, 1939 in the Yard Office at Palestine, Texas there was a position rated as Car Clerk which was assigned on a 365 day annual basis at \$5.45 per day. On July 5, 1939, for reasons of economy or otherwise, this position was abolished and has never been re-established.

On November 1, 1940 certain rules of agreement, binding upon the parties to this dispute, were adopted between the Gulf Coast Lines and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, which are the rules governing in this case. Rule 71 (a) of that agreement provides:

"This agreement shall be effective November 1, 1940, superseding all other rules, agreements and understandings prior to October 13, 1940, in conflict herewith, and shall continue in effect one year, and thereafter until it is changed as provided herein or under provisions of the Railway Labor Act."

On September 23, 1941 the Carrier created a new position to be known as Yard Clerk at Palestine, Texas, rated at \$4.95 per day, as a permanent new position which was bid in on bulletin of September 23, 1941. The duties of this position were stated to be: "Check Yard and industries; compile form 6793-T and form 1849 Jt Fuel report." The contention of the Brotherhood herein is that this position is essentially the same as the position of Car Clerk which had existed some years before and should have the same rating.

Prior to its being abolished the position of Car Clerk carried the following duties: "Check all yard and industry tracks; compile yard report Form 6793; Keep check of all tracks for information of Yardmaster and Engine Foreman; Check in and outbound trains; Compile fuel report Form 1849 Joint, and perform other duties as assigned by Yardmaster or Chief Yard Clerk, which included the weighing of cars."

It is apparent from the statement of duties that the position of Yard Clerk created by Bulletin No. 105, which is here in question, are not the same nor as extensive as those formerly performed by the Car Clerk when there was such a position. The two positions are not identical and cannot be so considered.

Regardless of this fact it is clear from the record that the position of Car Clerk was abolished long prior to the adoption of the present rules, and there is nothing at all in the present rules even tending to prevent the Carrier from creating this position of Yard Clerk, offering it by bulletin and permitting it to be bid in. So far as the present record shows there is nothing to indicate any violation of any rule as adopted on November 1, 1940, and Rule 71, above quoted, cuts off any effort to carry the matter back of that date.

It is the opinion of the Board that the claim should be denied.

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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1942.