

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 RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that C. E. Prejean be paid for all expenses incurred because of improper assignment made by the Carrier in connection with the position of Yard Clerk at Harlingen, Texas, in August 1941.

EMPLOYES' STATEMENT OF FACTS: On July 29, 1941, the Carrier issued bulletin covering position of Yard Clerk at Harlingen, Texas.

The following, among others, bid on the position while under bulletin:

NAME	SENIORITY DATE
Prejean, C. E.	2-15-29
Austin, C. P.	1-18-37

The Carrier assigned Mr. Austin to the position, thereby compelling Mr. Prejean, whose home is in Harlingen, to work a position away from home and at a lower rate of pay.

The Carrier has paid Mr. Prejean the actual wage losses he sustained, but refuses to pay him for the expenses he was forced to incur as a direct result of the Carrier's failure to comply with the Agreement.

POSITION OF EMPLOYES: We quote Paragraphs (a) and (b), Rule 7, of our current Agreement:

RULE 7.

PROMOTIONS, ASSIGNMENTS AND DISPLACEMENTS

"(a) Employees covered by these rules shall be in line for promotion. Promotions, assignments, and displacements under these rules shall be based on seniority, fitness, and ability; fitness and ability being sufficient, seniority shall prevail, except, however, that seniority shall not apply in filling the positions named in Paragraph (c) of this rule. (In filling positions listed in Paragraph (c) of this rule preference shall be given to employees coming under the provisions of this agreement.)

Carrier acknowledges that Mr. Prejean suffered wage losses and was forced to incur the expenses set out in Exhibit A. The Carrier has paid the wage losses but refuses to pay for the loss incurred through having to pay for room and meals.

As previously stated, the expenses incurred by Mr. Prejean, as listed in Exhibit A, were a direct result of the agreement violation by the Carrier and Mr. Prejean is entitled to recover the amount of those expenses.

We ask your Honorable Board to sustain our claim.

CARRIER'S STATEMENT OF FACTS: On July 29, 1941, a bulletin was issued covering a newly established yard clerk's position at Harlingen, Texas, assigned hours 9:00 P. M. to 6:00 A. M. Mr. C. E. Prejean with seniority date of February 15, 1929, and Mr. C. P. Austin with seniority date of January 18, 1937, made application for the position. The same was awarded to Mr. C. P. Austin, effective August 6, 1941. At the time Mr. C. E. Prejean was assigned to a position of check clerk at Odem at rate of \$5.15 per day, while the rate of the position of yard clerk at Harlingen was \$5.40 per day.

On August 4, 1941, Mr. J. E. Wheelis displaced Mr. Austin on yard clerk's position at Harlingen in the exercise of his seniority. On August 9, 1941, Mr. Wheelis was assigned to general clerk's position at Odem, and protected the position August 13th. At the time Mr. Wheelis was assigned to the general clerk's position at Odem on August 9th the position of yard clerk at Harlingen was again bulletined; Mr. Prejean made application for same, and was assigned August 14th.

Mr. Prejean submitted claim for time lost on account of not having been assigned to the position of yard clerk at Harlingen on August 6th, amounting to \$7.65, and in addition thereto, expenses at Odem amounting to \$15.00.

The Carrier reimbursed Mr. Prejean for the time lost on account of not having been assigned to yard clerk's position at Harlingen, as indicated above, but declined to allow expenses as claimed by him.

POSITION OF CARRIER: There is no rule in the agreement between this Carrier and the Clerks' Organization which provides for the payment of expenses to an employe due to failure of the Carrier to assign him in accordance with his seniority, as indicated in the Carrier's Statement of Facts in this case. It so happened that Mr. Prejean's home is at Harlingen; however, had he been assigned to the yard clerk's position at Harlingen, he would have been required to assume his own expenses at that point, the same as had he been assigned to a position at any other point on the railroad.

It is the contention of the Carrier that Mr. Prejean is not entitled to be paid his expenses while assigned to the position of check clerk at Odem because of the fact that he was not assigned to the position of yard clerk at Harlingen. His loss resulted because of the fact that the rate of the position which he filled at Odem from August 6th until he was assigned to the position of yard clerk at Harlingen was lower than that of the position of yard clerk, which loss was made good by the Carrier's reimbursing him to the extent of his loss; and your Honorable Board, upon the evidence herein submitted, is respectfully petitioned to deny the claim of the employe.

OPINION OF BOARD: In July, 1941 the Carrier made an improper assignment on position of Yard Clerk at Harlingen, Texas, and as a result thereof the claimant, who should have been assigned to the position, was forced to take another position temporarily in another town at expense to himself of \$15.00 for room and meals. The mistake in assignment was remedied within 10 days, Mr. Prejean was allowed the difference in wages

which he should have received, which has been paid, and the only dispute here presented concerns \$15.00 which he claims to have spent for room and meals away from home.

This Board has no power beyond that committed to it by Act of Congress and even that power is limited to an interpretation and application of the rules of agreement between the parties. There is nothing in the Act of Congress nor is there anything in any rule between the parties covering this case. If we should attempt to go outside the powers given us by Congress we would merely be entering an award which the courts would not enforce because it would be void on account of want of jurisdiction.

Mr. Prejean would have had to live under a roof and consume food had he remained at home, and there is no effort made in this claim to give any credit for his normal ordinary living expense for which the Employer in no event would have been held liable. The Carrier has compensated this employe for all monetary loss which must be held to include only losses arising out of the relationship of the employer and the employe. It is true, as urged, that Mr. Prejean lived very modestly and inexpensively at his other location, but if the rule is adopted allowing him compensation for his living expenses this Board would be drawn far afield because the next man who sought to apply the rule might have lived lavishly and expensively and this Board would then be drawn into the question of what is or is not reasonable living expenses.

Award No. 1324 is cited to us wherein an allowance was made for house rent in the case of a telegrapher who was wrongfully transferred to to another location. The record in that case however shows that this house and water were furnished to him as part of his compensation in the position to which he should have been assigned, and the allowance for monetary loss in that case was based on that theory.

The Board is of the opinion that it has no power to allow this claim for want of any rule specifically covering 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 claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order or Third Division

ATTEST: H. A. Johnson
Secretary

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