

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

1. That the Carrier violates the current agreement and interpretation thereto when employees regularly assigned to seven (7) day positions are not worked on Sundays and/or designated holidays by the subterfuge of changing the positions to six (6) day assignments immediately preceding the Sunday and/or holiday and then re-assigning the positions to seven (7) days immediately following the Sunday and/or holiday.

2. That yard clerks, J. L. Woodall and E. U. Fogle, employed at Shreveport, La., be paid one (1) day each for each of the following holidays, viz., July Fourth and Labor Day of the years 1938, 1939 and 1940, account not being permitted to work on those dates because the Carrier adopted and used the scheme outlined in Claim 1.

3. That other employees assigned to seven (7) day positions be paid one (1) day for each Sunday and/or holiday not worked account the Carrier's use of the scheme outlined in Claim 1.

4. That employees assigned to seven (7) day positions, or employees entitled to fill a vacancy therein, be paid one (1) day for each day not worked when prevented from doing so by the Carrier, whether by the method outlined in Section 1 of this or any other plan devised for the purpose of reducing the days work below seven (7) per week.

EMPLOYEES' STATEMENT OF FACTS: On Saturday, July 2, 1938, and prior thereto, Messrs. J. L. Woodall and E. U. Fogle were regularly assigned to seven (7) day positions at Shreveport Junction, which positions were designated as X92 and X96, Yard Clerk, respectively. On that date General Yardmaster Brown issued the following bulletin:

"Hollywood, La.
July 2, 1938

J. L. Woodall
E. U. Fogle

Effective now positions X92 and X96 yard clerks working at Shreveport Junction are changed from 7 days per week to 6 days per week, Mondays off.

(Signed) J. A. Brown
General Yardmaster."

The following Monday, July 4, 1938, both clerks were held off duty.

On Thursday, July 7, 1938, General Yardmaster Brown issued the following bulletin:

“Fort Worth, Texas, January 17th, 1923.

File 296.

Mr. J. A. Somerville,
General Manager,
Texas and Pacific Railway,
Dallas, Texas.

Dear Sir:

Kindly refer to your letter April 20th, 1922, file T-4980, in the claim of O. L. Frederick, J. A. Brown, J. E. Warr and J. H. Epps, clerks at Longview Junction for two days pay each account having been laid off on December 26th, 1921, and January 2nd, 1922.

This will serve as notice to you that this claim is hereby withdrawn and you may close your file.

Yours truly,

/s/ C. D. Huyge
General Chairman,
BofR&SSCFHE&SE—T&P Ry.”

In conclusion, would also call attention to your Board's Awards 426 and 930; Award No. 426 being called to former General Chairman Stamper's attention in former Assistant General Manager Tobin's letter of August 10, 1939; also to the further fact that this claim was handled in conference August 7, 1939, denied by former Assistant General Manager Tobin, August 10, 1939, and we had every reason to believe that the decision was accepted by former General Chairman Stamper as nothing to the contrary was heard from him for considerably more than a year thereafter, or until November 25, 1940. See this division's Award 1645.

Would also call attention to Award 1268 of the First Division on our property wherein a yard engine was assigned six days per week, same principle as involved in this case—clerk assigned 7 days per week and not working on a holiday. There is no guarantee in the yard agreement for any specified number of days; therefore, the Board denied the claim of the employee and it is equally true there is no guarantee in the Clerks' Agreement except that as contained in Rule 44, six days per week, excepting this number may be reduced in a week in which holidays occur by the number of such holidays, even below six days.

The fact remains, however, the maximum guarantee is six days per week under our Rule 44, and our Rule 45 provides that so far as practicable they will be given one day's rest and in this case, as previously stated, it was practicable in these weeks to give the men one day's rest and same was done in accordance with Rule 45.

OPINION OF BOARD: The bulletins cited in petitioner's statement of facts are not in dispute. The result of these respective bulletins was to eliminate one day only in each of the months of July and September. This involves the claims of J. L. Woodall and E. U. Fogle covered by item 2 of the statement of claim.

Carrier contends that claims for compensation covered by items 3 and 4 of the statement of claim have not been handled on the property, as contemplated by the Railway Labor Act. There is not sufficient showing in the record of this case to indicate that they were so properly handled, and items 3 and 4 are therefore dismissed.

Under the facts and circumstances of this particular case Items 1 and 2 of the claim should be sustained and Items 3 and 4 dismissed.

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 items 1 and 2 of the statement of claim are sustained, and items 3 and 4 are dismissed.

AWARD

Claim sustained as to items 1 and 2 of the statement of claim, dismissed as to items 3 and 4.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of November, 1942.