

Award No. 2197
Docket No. CL-2216

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

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 Sunday and holiday work performed by the Cashier at Baytown, Texas, be paid for at the rate of time and one-half.

EMPLOYEES' STATEMENT OF FACTS: On January 28, 1941 bulletin was issued advertising new position of Cashier at Baytown, Texas, with rate of \$5.50 per day and an annual assignment of 365 days.

The employees filed claim under Memorandum Agreement which reads as follows:

"With reference to agreement regarding 365 day assigned positions not necessary to the continuous operation of the carrier.

"It is agreed that all 365 day assignments, not necessary to the continuous operation of the carrier, will be reduced to 306 day assignments and the daily rate will be adjusted so that the earnings will be the same as received for 365 days.

"This understanding shall remain in effect until changed in accordance with the terminating rule of the agreement."

The Carrier and employees agree that the position here involved is not necessary to the continuous operation of the Carrier and in partial compliance with the above quoted agreement, the rate of pay was adjusted, retroactive to the date the position was created, so that the earnings are the same for a 306 day assignment as they were on a 365 day assignment.

Rule 47, of Clerks' Agreement, quoted above, provides that work performed on Sundays and designated holidays shall be paid for at the rate of time and one-half, except that employes regularly assigned to work full time on Sundays and the seven designated holidays and men called to fill their places on such regular assignment, will be compensated at the pro rata rate of the position. The Cashier is regularly assigned to work full time on Sundays and the seven designated holidays as contained in Rule 47 and, under that rule, is entitled to be compensated at the pro rata rate of the position and not at the rate of time and one-half as claimed by the Organization.

It is the contention of the Carrier that inasmuch as the Cashier at Baytown is assigned to work regularly on Sundays and the seven designated holidays, as provided for in Rule 47 and the further fact that he is required to sell tickets for passenger trains passing Baytown during his tour of duty each week day, holiday and Sunday that he is being properly compensated at the pro rata rate of the position. Your Honorable Board is respectfully petitioned to so rule.

OPINION OF BOARD: In this particular case it is not necessary nor does the Board pass on the question as to whether or not the position involved is one necessary to the continuous operation of the carrier.

The record shows the parties reached agreement on August 26, 1942, that the assignment here involved would be reduced from 365 to 306 days per year and the rate of pay was adjusted accordingly. The question here presented involves the rate of pay for work performed on Sundays and holidays. The Board previously held that the October 13, 1940 letter was by reference and adoption made a part of the agreement of November 1, 1940, and under the provisions thereof we find that the occupant of the position here involved is entitled to compensation at the rate of time and one-half for work performed on Sundays and Holidays effective August 30, 1942.

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 occupant of position in question is entitled to compensation at the rate of time and one-half for work performed on Sundays and holidays effective August 30, 1942.

AWARD

Claim sustained as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1943.