Award No. 2327
Docket No. CL-2218

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, 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 AND 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 at San Benito, Texas, by requiring an employe who is not covered by the Clerks' Agreement to sell tickets between 7:00 A. M. and 11:45 A. M., also

(b) Claim that the Passenger and Ticket Agent be paid at the rate of time and one-half from 7:00 A. M. to 11:45 A. M. each day because of this agreement violation.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains two separate stations at San Benito—a Freight Station and a Passenger Station. These stations are located in adjoining blocks and each is under the supervision and direction of a responsible Agent.

The force at the Freight Station consists of the following:

Freight Agent
Cashier
General Clerks (3)
Trucker
Telegraphers (3)

The Freight Agent is not covered by any agreement at all. The Cashier, General Clerks and Trucker are covered by the Clerks' Agreement. The three Telegraphers are covered by the Telegraphers' Agreement.

The Passenger Station force consists of only one employe—the Passenger and Ticket Agent, who is covered by the Clerks' Agreement.

and that inasmuch as the Passenger and Ticket Agent does not perform any service between the hours of 7:00 A. M. and 11:45 A. M. he is not entitled to be paid on overtime basis from 7:00 A. M. to 11:45 A. M., as is claimed by the Organization and your Honorable Board is respectfully petitioned to so rule.

OPINION OF BOARD: At San Benito, Texas, the Carrier has a freight station and a passenger station located about 200 feet from each other. On April 1, 1939, the position of Passenger and Ticket Agent at this station was included in the Clerks' Agreement but excepted from the provision of the Agreement respecting the hours of service. During the time this situation prevailed the position was assigned such hours as were necessary to protect all of the service of selling tickets.

On November 1, 1940, the position was made subject to all rules of the agreement and assigned eight hours per day. A few days later the Carrier requested permission to assign the position intermittent hours to cover arrival of all passenger trains and buses, but was refused.

The Carrier then assigned the Passenger and Ticket Agent to the hours 1:00 P. M. to 10:00 P. M. with one hour off for lunch and instructed the Freight Agent, who was not covered by the Agreement, to sell tickets from 7:00 A. M. to 12:00 M. The Clerks' Organization objected to this arrangement and the Carrier then assigned the work of selling tickets in the morning to the Cashier at the freight station, who was covered by the Clerks' Agreement. The Cashier continued to sell the tickets in the morning until September 8, 1941, when the Carrier assigned this work to a telegrapher at the freight station who was required to go to the passenger station and do this work during the morning. A check of this work done by the telegrapher on November 15, 1942, showed that he spent 3'30" on the work. The Carrier by letter to the General Chairman, dated October 15, 1942, said the telegrapher was assigned to this work for 4'15".

The Carrier in its original submission admits that "It is also true that the selling of tickets is work which devolves upon employes covered by the Clerks' Agreement, but only when employes covered by that agreement are assigned to perform that class of work." Here an employe covered by the Clerks' Agreement, the Cashier, was assigned to perform the work in question. By the Carrier's own statement then the work did thereby come under the Clerks' Agreement. By the terms of the Memorandum Agreement dated November 1, 1940, if the work was work covered by the Clerks' Agreement, it belonged to and must be assigned to employes holding seniority rights and working under the Clerks' Agreement, except in certain cases none of which is applicable here.

By assigning this work to the telegrapher the Carrier did violate the Agreement.

Claim (b) of this docket asks that the Passenger and Ticket Agent be paid at the rate of time and one-half from 7:00 A. M. to 11:45 A. M. because of this violation.

The Carrier stated that the Cashier who was temporarily assigned to this work during his regular hours could no longer do this work because of the increased volume of his own work. Rule 45b of the applicable agreement provides that in working overtime and in working extra time on Sundays and holidays, "employes regularly assigned to class of work for which overtime is necessary shall be given preference."

Item (b) of the claim should also be sustained. See Awards Numbered 2282, 2163 and 685.

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 Carrier violated the agreement as alleged in the claim.

AWARD

The claim, (items (a) and (b)) is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of September, 1943.

DISSENT TO AWARD NO. 2327, DOCKET CL-2218

This Docket CL-2218 came before the Third Division, with Referee H. Nathan Swaim sitting as a Member thereof, jointly with Dockets CL-2162 to 2167 incl., Awards 2253 to 2258 incl., on the question of notice of hearing to involved employes, including those employes outside of the Clerks' Agreement, who are now performing the work which the Clerks' Organization contends is covered by the Agreement. The key award in those cases, Award No. 2253, Docket CL-2162, in the second and third paragraphs of the Opinion of Board, thus stipulates and reference accordingly is here made to that Award No. 2253.

The first 25 paragraphs of the Opinion of Board in Award No. 2253, Docket CL-2162, deals with the question of this Division's obligation to serve such notice of hearing upon involved employes, and those paragraphs on that question were therefore equally applicable in reaching the decision in the instant case.

As shown by the Opinion of Board in Award No. 2253, and by the dissenting opinion thereto, there was a different handling of that group of cases from that which developed in the instant case in that no hearing in the Dockets CL-2162 to 2167, inclusive, was at any time afforded the respondent. In the instant case the further handling by this Division, with Referee H. Nathan Swaim sitting as a Member, accorded the respondent the facility of a hearing. However, in other respects relating to the denial of advice by notice of hearing to involved employes and by rejection of documents submitted on behalf of such involved employes, both by the individuals involved and by their representative, the Order of Railroad Telegraphers, the handling was no different. In the instant case the procedures in respect to notice of hearing to involved employes and in respect to rejection of documents submitted under dates of February 23, 1943, and June 14, 1943, on behalf of such involved employes, previously followed by this Division for three preceding years, were reversed just as they had been in handling the dockets resulting in Awards 2253 to 2258 inclusive, with the consequent error which now also appears in the Award in the instant case.

The elemental issue which the instant dispute presented, alike with the disputes in Dockets CL-2162 to 2167 inclusive, was that of claimed exclusive right to the work in question in each of the individual disputes. Compliance

with the normal complete procedures of this Division theretofore followed required the customary and legally necessary action to secure and admit all the evidence which would have placed this Division in a position to decide that issue accurately and conclusively. As above noted, the Opinoin of Board in Award No. 2253, in the first 25 paragraphs thereof, deals with the question of procedure. Similarly, the dissent to Award No. 2253, in the last 14 paragraphs thereof, deals with the resulting narrowly limited consideration and disregard of evidence essential to a proper decision upon that issue. Reference is here made to those respective paragraphs of the Opinion of Board and of the dissent to Award No. 2253; they are applicable to the handling given the instant Docket, CL-2218, as they were applicable to the handling in Dockets CL-2162 to 2167 inclusive. Because of their accessibility, those paragraphs will not here be repeated.

The Opinion of Board in the instant Award, in its fifth paragraph, declares that "By the terms of the Memorandum Agreement, dated November 1, 1940, if the work was covered by the Clerks' Agreement, it belonged to and must be assigned to employes holding seniority rights and working under the Clerks' Agreement, except in certain cases none of which is applicable here." That statement but emphasizes the inconclusiveness of decision due to the lack of essential evidence resulting from the limitations placed upon the Division's procedures.

It was the obligation of the Division to admit and consider the evidence known to exist here, available through the presentation of the individuals occupying positions involved and endangered by possible support of the claim and also available from the submitted but rejected presentation from the Order of Railroad Telegraphers that would have enabled the Division to accurately determine that as to which the Opinion of Board in itself expressed doubt, viz., "if the work was work covered by the Clerks' Agreement, etc." That issue and that "if" has not been factually and properly determined in this case, and until it is done, through a process of reverting to the normal complete procedures of this Division in giving consideration to all the evidence which would enable a proper determination of that issue, it will remain unresolved.

(s) C. C. Cook
(s) R. F. Ray
(s) C. P. Dugan
(s) A. H. Jones
(s) R. H. Allison