# Award No. 2344
# Docket No. CL-2307

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Henri A. Burque, Referee**

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## 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:

(a) The Carrier violated the Clerks' Agreement by refusing to make retroactive adjustment in the rates of pay for positions on which the annual assignments were reduced from 365 days to 306 days. Also

(b) Claim that the employes involved shall be paid the difference between the daily rates of pay based on a 365 day assignment and the daily rates of pay based on a 306 day assignment for each day they worked the positions during the period November 1, 1940 to May 31, 1942, both dates inclusive.

**EMPLOYES' STATEMENT OF FACTS:** On November 1, 1940, and prior thereto, the positions listed in Exhibit A were assigned on a 365 day annual basis.

On November 1, 1940, an agreement became effective requiring that all 365 day annual assignments, not necessary to the continuous operation of the Carrier, be reduced to 306 day annual assignments. The agreement further required that the rates of pay be adjusted so that the earnings of the positions would be the same for 306 days' service as they had been for 365 days' service.

Effective June 1, 1942, the Carrier reduced the annual assignment of all the positions shown in Exhibit A from 365 days to 306 days without any reductions in the earnings. In other words, on and after June 1, 1942, the employes received the same compensation for 306 days' service as they formerly had received for 365 days' service.

The Carrier has refused to make retroactive adjustment in the rates of pay for the period November 1, 1940 to May 31, 1942.

**POSITION OF EMPLOYES:** The employes quote the following from agreement that became effective November 1, 1940:

as stated in the letter: 'so that the earnings will be the same as received for 365 days.' The sole purpose of the Letter Agreement was to provide for a reduction in the number of working days by 59 and to require that the employes should receive the same total pay for the 306 days under the new assignment as they had received for the 365 days under the old.

It is obvious that in order to accomplish this result the basic rate had to be raised in proportion as the number of days constituting the assignment was diminished. For example: An employe working 365 days under the old assignment at a monthly rate of $290.00 would receive for a year's work $3,480.00 and the basic rate for one day would be $9.53. On a 306 day assignment which the Agreement calls for, his basic rate per day would have to be increased to $11.37 to produce the same amount for the year as called for by the Agreement. And what is true for the whole year is true for any fractional part of it.

So long therefore as the employe has received that basic rate for the number of days actually worked since November 1, 1940, the day when the change in the assignment should have been made effective, he has been paid in accordance with the Agreement, of course leaving out of consideration on this hypothesis all questions of overtime or other variations from the basic rate." (Underscoring added.)

The General Manager in his letter to the General Chairman dated July 7, 1942, which is quoted in the Carrier's Statement of Facts, advised him that he was agreeable to paying the monthly rated employes involved in this case an additional day at the straight time rate of the position for each Sunday and holiday worked, November 1, 1940 to the date change became effective June 1, 1942, which is in accordance with Interpretation No. 1 to Award No. 1627 rendered by your Honorable Board May 20, 1942, from which the above is quoted. In other words, the Carrier is agreeable to paying each employe affected for each Sunday and holiday worked November 1, 1940 to June 1, 1942 at the basic daily rate, obtained by dividing the annual compensation by 306, in addition to what he was paid at the monthly rate based on an annual assignment of 306 days.

The Carrier feels that the offer to compensate the monthly rated employes involved, on the basis of an additional day at the straight time rate of the position for each Sunday and holiday worked, November 1, 1940 to the date change became effective, June 1, 1942, as contained in General Manager's letter to the General Chairman dated July 7, 1942, would fully compensate them for all services rendered, and would be in conformity with the ruling of your Honorable Board in Interpretation No. 1 to Award No. 1627, in view of which your Honorable Board is respectfully petitioned to support the position of the Carrier in this case.

**OPINION OF BOARD:** Award 1614, CL-1679, the first to deal with the subject matter of adjustment of wages on a yearly basis of 306 days instead of 365 days for a year, establishes two propositions: first, that adjustment is to be made effective as of November 1, 1940; second, that according to Carrier's letter of October 13, 1940, "all 365 day assignments —will be reduced to 306 day assignment and the daily rate will be adjusted so that the earnings will be the same as received for 365 days." This was affirmed in Award 1615, CL-1668. Later the same issue arose again in Award 1627, CL-1748, and the same result reached.

True it is, that the employes involved in the above awards were employes paid on a daily basis, while here we are concerned with employes paid monthly, in which case the Carrier contends a different method of adjustment should be adopted than that adopted for employes on a daily basis.

Looking back at Award 1614, we find this language used:

> "It is claimed that the re-assignments contemplated by the letter apply only to daily rated positions. To support this claim the carrier calls attention to the second paragraph of the letter of October 13th which says in part 'the daily rate will be adjusted so that the earnings will be the same as received for 365 days.' We do not attach to this wording the significance suggested by the carrier. The meaning is simply that the same pay will be received for 306 days work as had been received for 365. That this is so is made clear when we glance at the first line of this paragraph which shows that this agreement applies to 'all 365 day assignments.' In our opinion it makes no difference that the pay is based on an hourly, a daily, a weekly, or a monthly rate."

It may be said that the statement in the last above sentence was not necessary for the determination of the issue involved in the case and is merely dictum, but it tends to demonstrate what was in the minds of the members of the Board at that time and what the Board would, no doubt, probably decide when the issues were properly presented to them.

This award is followed by Award 1615, which, in Interpretation No. 1, refers to Award 1614 as a key case governing this Award 1615, and reaffirms it. Though this case also is one pertaining to daily rated employes, and the statement cited above is not referred to specifically, it is to be assumed the Board, with the same Referee sitting in Award 1614, had it in mind.

Then we have Award 1627, also applicable to daily rated employes, which also refers to Award 1614 as a key case and holds the same. Interpretation No. 1 to this Award has the following to say:

> "The employes here concerned are paid on a monthly basis and their claim is that they have not been treated in the same manner in the carrying out of the terms of the award as were the daily rated employes and certain of the monthly rated employes. They contend that they have not been granted the same proportionate increase in their daily rates as was given to the employes concerned in the other awards.
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> "The question whether the Carrier violated the Agreement in not changing the rate of these employes from a monthly basis to a daily basis is not, as we see it, involved in this Interpretation."

The Interpretation continues on and says:

> "It is obvious that in order to accomplish this result [that of reducing work days and adjustment of pay] the basic rate had to be raised in proportion as the number of days constituting the assignment was diminished. For example: An employe working 365 days under the old assignment at a monthly rate of $290.00 would receive for a year's work $3,480.00 and the basic rate for one day would be $9.53. On a 306 day assignment which the Agreement calls for, his basic rate per day would have to be increased to $11.37 to produce the same amount for the year as called for by the Agreement. And what is true for the whole year is true for any fractional part of it."

Note that the formula given takes a monthly rate for an example. This is significant in view of the fact that the Board is again sitting with the same Referee as in Award 1614 and Award 1615, and the Interpretation refers to Award 1614 as a key case and to Award 1615 in support thereof, and says both apply in the instant case, Award 1627.

Next comes Award 2009, CL-1902, dealing with monthly paid employes, and the Award holds that monthly paid employes shall be paid on a daily

basis. No reference is made to the effective date of adjustment but the issue was clearly drawn and put forth by both parties to the effect that it was whether monthly rated employes listed in Section (c) of Rule 7 should be changed to a daily basis; the petitioners contending they should, the Carrier contending they should not. The Award was to the effect that they should. It said:

> "Rule 48 (a) provides that employes covered by Groups (1) and (2), Rule 1 theretofore paid on a monthly basis shall be paid on a daily basis."

and the rule, not quoted in full in the Award, goes on to say:

> "The conversion to a daily basis of monthly, weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect."

All positions covered by Groups (1) and (2) of Rule 1 were formerly paid on the monthly basis and the Award continues on and says:

> "Thus the express language of the agreement includes the positions listed and followed by an asterisk (*) among those thereafter to be paid on a daily basis. These positions are expressly excepted from the seniority call and overtime rules but they are not expressly excepted from the daily pay rule.
>
> "It is a recognized rule in the construction of contracts that where one or more exceptions to a provision are expressed no other or further exceptions will be implied."

We have seen that the effective date of the adjustment is definitely fixed as of November 1, 1940.

We note in Award 2009 that on January 15, 1941, the General Chairman of the Employes' Brotherhood communicated with the Carrier's General Manager protesting against listing of certain positions listed in Rule 7 (c) to be carried on a monthly basis as per bulletins, and that the positions should be carried at a daily rate of pay as per Rule 48 (a), as they were not excepted from this rule. This, no doubt, was done as soon as the attempted violation came to the attention of the General Chairman and is evidence of the claim, inferentially, that the change had been made November 1, 1940, the date upon which Rule 48 (a), governing this case, took effect.

The Carrier takes the position that it has not refused to make the adjustments and that consequently the petitioner's Claim (a) that it has, should be denied. The Carrier states that the only reason the adjustment has not been made is because it has not been able to agree with the petitioner on the method to be adopted therefor. If we understand the Carrier's position correctly, it is to the effect that it wishes to have the monthly payments stand, prior to June 1, 1942, and to allow pay on the newly computed basis for work performed Sundays and holidays, during the period from November 1, 1940 to June 1, 1942. On this assumption the result achieved would be this: Take the formula adopted in Interpretation 1, Award 1627, for an example; if the employe was earning, we will say, $290.00 per month, which means his daily pay was $9.53 on a 365-day period, under the adjustment plan his pay would be $11.37 per day on a 306-day period, in order to give him the same amount he would earn on a 306-day year, as compared to a 365-day year; in other words, the Carrier would pay for the extra work at the new rate while it would be paying for regular work at the old rate. This, to say the least, would be quite inconsistent. If, as the Carrier apparently concedes, the employe is entitled to be paid on the basis of the newly adjusted rate for extra work performed over 306 days in a year, from November 1, 1940 to June 1, 1942, why is he not also entitled to be paid on the basis of the newly adjusted rate for regular work performed?

There seems to be but one logical conclusion, and that is that he should. This Division has decided the new rate applied for each day's work since November 1, 1940, limited to regular 306-day a year assignment, all other work days to be paid on the same basis as daily paid employes, so that the monthly paid employes are entitled to compensation at the new daily rate since November 1, 1940, on the basis of 306 work days in the year, and for additional compensation for each day's work performed over 306 work days in the year.

Considering the case in this light, it is obvious that though technically speaking the Carrier may not be said to have refused adjustment, still in view of the fact that it has not recognized and has not been willing to accept the proper method and formula to be applied, it, in effect, did refuse to make the adjustment.

We cannot follow the Carrier in its contention and reasoning that it and the petitioners agree the adjustment should be made in conformity with Award 1627. We have seen that Interpretation No. 1 to this Award definitely states:

> "The question whether the Carrier violated the Agreement in not changing the rate of these employes from a monthly basis to a daily basis is not, as we see it, involved in this Interpretation."

Interpretation No. 2 to Award 1627 is to the same effect.

We therefore conclude the propositions raised in this proceeding are no longer open to controversy, and that the employes involved in this case (they being agreed upon by both parties and listed by them in the record) are entitled to adjustment of pay from a monthly basis to a daily basis, effective as of November 1, 1940, as per formula adopted in Interpretation No. 1, Award 1627, cited above in this Opinion, and entitled to be paid the difference between the daily rates of pay based on a 365 day assignment and the daily rates of pay based on a 306 day assignment for each day they worked the positions during the period November 1, 1940 to June 1, 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 employes involved in this dispute are respectively carrier and employes 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.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of October, 1943.

# NATIONAL RAILROAD ADJUSTMENT BOARD
# THIRD DIVISION

## INTERPRETATION NO. 1 TO AWARD NO. 2344

## DOCKET CL-2307

**NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes**

**NAME OF CARRIERS: 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)**

Upon application of the Brotherhood for the employes involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The employes have the correct solution. It appears on pages 2 and 3 of their application for interpretation.

Considering the position of Chief Clerk to the Auditor at Palestine, his monthly rate of $270.00 under the terms of the agreements and Award No. 2009 of this Division, became a daily rate of $10.59 on November 1, 1940. His old rate, using the 365-day divisor, was $8.88. The difference between these two rates which was requested in the statement of claim in Docket No. CL-2307, and sustained in Award No. 2344, is $1.71 per day, to which the employe is still entitled for each day he worked.

In the case of the Chief Clerk to Auditor of Freight and Passenger Accounts, referred to by the carrier, his monthly rate of $250.00, on November 1, 1940 became a daily rate of $9.80. The difference between this and his old daily rate of $8.22 is $1.58 per day, to which the employe is still entitled for each day he worked. See Interpretation No. 1 to Award No. 2482, Docket CL-2483 (Serial No. 49).

Retroactive payments to all other employes involved should be computed in the same manner.

Referee Henri A. Burque, who sat with the Division as a member when Award 2344 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of September, 1944.