

Award No. 2482
Docket No. CL-2483

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, 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:

- (a) The correct rate of pay for the position of Office Manager in the Auditor's office at Houston, Texas is \$13.70 per day. And
- (b) Claim that the correct annual assignment is 306 days and that all Sundays and holidays be paid for at the rate of time and one-half. Also
- (c) Claim that all employees involved in or affected by the Carrier applying an improper rate of pay and annual assignment be compensated for all losses sustained.

EMPLOYEES' STATEMENT OF FACTS: The position here in dispute has a rather lengthy history, with which this Honorable Board is fully acquainted. This is the fourth time your Board has had to consider the position here in dispute. The first was Docket CL-1619; second, Serial No. 39, Interpretation No. 1 to Award No. 1673; third, Docket CL-2306, which has not yet been decided; and fourth, the instant case.

The question presented to your Honorable Board at this time is the correct annual assignment and daily rate of pay for the position of Office Manager. Both the rate of pay and annual assignment depend solely upon whether or not the position is necessary to the continuous operation of the Carrier.

The Carrier stated in Docket CL-1619, in their original submission, that the position had "only supervisory duties." The Carrier also states on page 4, second full paragraph of their original submission in Docket CL-2306, that the Office Manager—"has been assigned supervision over all the departments and employees in the Auditor's office."

Bulletin of January 22, 1943, re-establishing the positions describes the duties as follows:

"Assignments of work and discipline in the office; handling of matters pertaining to general accounts, A and B work, joint facility

covered by Docket CL-2306 with which your Board is entirely familiar and the Carrier respectfully petitions your Honorable Board to give consideration to the Carrier's position in the above referred to docket in reaching a decision in the instant case.

It is the contention of the Carrier that your Honorable Board should rule, in view of the evidence submitted herein, as well as that covered by Docket CL-2306, that the position of Office Manager should have an assignment of 365 days per annum, the same as it had when the position was discontinued at the close of business on September 30, 1940.

OPINION OF BOARD: The question here involved is the correct rate of pay for the position of Office Manager in the Auditor's office at Houston, Texas, which rate depends entirely on whether the annual assignment is on a 365 or 306 day basis. This is the fourth time this claim and matters related thereto have been before this Board for its consideration. A brief review of the previous awards is necessary to properly present the issue now before us.

In Award No. 1673, we determined that the carrier violated its agreement with the clerks' organization when it discontinued the position of Office Manager on September 30, 1940 and assigned the duties of that position to one not covered by the agreement. The claim for losses in pay sustained from October 1, 1940 until the violation was corrected, was ordered by the Board.

On December 9, 1942, this Board issued Interpretation No. 1 to Award No. 1673 (Serial No. 39) wherein we said that Award No. 1673 meant that the employe affected should be paid until the violation was corrected.

The position in question was an excepted position under the April 1, 1939 schedule. It appears, however, that on November 1, 1940, the carrier and clerks' organization negotiated a new agreement in which the position of Office Manager was not designated as an excepted position. On January 27, 1943, the carrier reinstated the position and filled it without regard to seniority on the theory that it was an excepted position. The clerks' organization thereupon brought the matter to this Board claiming that the position of Office Manager was not excepted by paragraph (c) of Rule 7 of the current agreement effective November 1, 1940; claiming also that carrier violated the current agreement in not assigning the senior qualified bidder for the position; and that losses of pay be awarded to all employees adversely affected by the violation of the agreement. These claims were determined by Award No. 2343. In that award we said that as the position was to be restored as of October 1, 1940, its restoration was governed by the agreement of April 1, 1939 then in effect, and not that of November 1, 1940 subsequently entered into, even though the position was not actually restored and filled until January 27, 1943. In other words, the effect of that award was to fix the rights of the parties as of October 1, 1940 insofar as the restoration of the position was concerned. We thereupon held in conformity with the 1939 agreement that the carrier did not violate it in filling the position without regard to seniority, it being an excepted position under that agreement. It was also determined by that award that the position was not included in paragraph (c) of Rule 7 of the 1940 agreement and consequently that it was not an excepted position after November 1, 1940. The Opinion of the Board declares also that the 1940 agreement has no application to the matter of the restoration and filling of the position as of October 1, 1940. The Board's opinion then reserves for future consideration any claim that might arise subsequent to November 1, 1940, the effective date of the current agreement.

With the foregoing awards before them, the parties have been unable to agree on the nature of the position of Office Manager and the effect of the current agreement entered into on November 1, 1940 as it bears upon the question whether the annual assignment should be for 365 or 306 days. The carrier contends that the position is governed in all its aspects by the agreement of April 1, 1939 and that a 365 day annual assignment is therefore proper. The employees contend that the provisions of the November 1, 1940

current agreement are controlling on the issue here presented and as the position is not excepted under that agreement which includes the letter agreement of October 13, 1940 by reference and adoption (Award No. 1846), all its provisions should be given effect. The letter agreement provides that the carrier shall reduce all 365 day annual assignments to 306 day assignments without affecting the annual pay, except those necessary to the continuous operation of the carrier. It seems clear to us that the same effect should be given the current agreement, effective date November 1, 1940, that would have been given if the position had actually been restored and filled on October 1, 1940. We would then have been bound to assume that any changes made in the 1939 agreement by the negotiation of the 1940 agreement were made for the very purpose of avoiding, abrogating or amending the terms of the former as to all positions not excepted from their operation. Consequently, upon the effective date of the 1940 agreement, its terms applied to all positions not excepted from the agreement including the one made the subject of this dispute. Therefore the carrier was obligated by the contract to reduce the 365 day assignment of the Office Manager to 306 days upon the effective date of the current agreement or whenever such position again came into existence after that date, unless such position was necessary to the continuous operation of the carrier. Any other interpretation would require us to give effect to a contract which had been completely nullified by a new subsequent agreement. We are obliged to hold that the current agreement superseded the old one in all respects on its effective date.

The carrier contends that the position of Office Manager was necessary to the continuous operation of the carrier and therefore properly assignable on an annual basis of 365 days in accordance with the letter agreement of October 13, 1940. The phrase "necessary to the continuous operation of the carrier" has been generally construed to mean "necessary for the continuous operation of trains." Award No. 1641. The record shows that the Office Manager has general supervision over all clerical positions in the Auditor's office. The relationship of the Office Manager to the continuous operation of trains is incidental only. We fail to find sufficient evidence in the record to sustain a finding that the position of Office Manager was necessary to the continuous operation of trains.

The carrier complains of the action of the clerks' organization in "splitting its cause of action" in that the present claim could have been filed as a part of the claim on which Award No. 2343 was based. If it could be shown that the splitting of a claim has resulted in an irreparable loss to the carrier or that it was done in bad faith, a dismissal might be justified. But we find no such mischief in the present situation and consequently we will not invoke the harsh remedy demanded by the carrier. A claimant ordinarily will be required, however, to present all the grievances he has when he makes formal claim against the carrier.

We necessarily conclude that the position in question should have been reduced from a 365 day annual assignment to one of 306 days as of November 1, 1940, or whenever such position again came into existence after that date, and that the daily rate of pay should have been fixed at \$13.70 instead of \$11.48 at the same time. It follows that the Office Manager is entitled to time and one-half for Sundays and holidays worked after November 1, 1940 to the date the position was correctly assigned. Award No. 1846. This necessarily implies that no retroactive pay will be allowed prior to January 27, 1943, the date this position was last established.

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 employee involved in this dispute are respectively carrier and employee 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 current agreement as contended by the claimant.

AWARD

Claim (a) sustained; claim (b) sustained; claim (c) sustained to the extent that retroactive pay will be allowed only from the date the position was last established.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of February, 1944.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 2482
DOCKET CL-2483

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

NAME OF CARRIER: Gulf Coast Lines, International-Great Northern Rail-
road Company, San Antonio, Uvalde & Gulf Railroad Company,
Sugarland Railway Company, Asherton & Gulf
Railway Company

(Guy A. Thompson, Trustee)

Upon application of the representatives of the employees 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 dispute is primarily over the meaning to be given to the words "claim (b) sustained" contained in the award. Claim (b), as contained in the original ex parte submission, is as follows: "Claim that the correct annual assignment is 306 days and that all Sundays and holidays be paid for at the rate of time and one-half." An examination of the record discloses that no issue was raised as to the number of Sundays and holidays worked prior to the entry of Award No. 2482. It appears to have been assumed that all Sundays and holidays were worked. The opinion accompanying the award, however, limited the time and one-half pay to Sundays and holidays worked. A proper construction of the award, viewed in the light of the dispute between the parties and the intention of the Division as shown by the accompanying opinion requires that the words "as to Sundays and holidays worked" be read into the award by implication so that the pertinent part of the award is made to read in effect as follows: "Claim (b) sustained as to Sundays and holidays worked."

In applying the award to the facts, the claimant is entitled to additional compensation in the amount of \$1028.17, calculated as follows: 361 working days at \$13.70 per day, less \$11.48 per day paid, \$801.42; 25 Sundays and holidays worked at \$20.55 per day, less \$11.48 per day paid, \$226.75. Claimant having been assigned to work the remaining 44 Sundays and holidays, and having been paid the assigned rate of \$11.48 per day therefore, no off-set of such amounts can properly be had against the \$1028.17 found to be due the claimant.

Referee Edward F. Carter, who sat with the Division as a member when Award 2482 was adopted, also participated with the Division in making the interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of September, 1944.