

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood that:

(1) The rules of the Agreement of November 1, 1939 govern the payment of truckers employed in the Lake Charles Freight Station.

(2) The payment of Charles Taylor and W. L. Leonard, Truckers, Lake Charles, for services rendered in the months of November and December, 1942 be adjusted to conform to the rules of the Agreement, the adjustment to represent (a) the difference between straight time payment and time and one-half payment for all services performed, in excess of eight hours on any day, outside hours of assignment, and on Sundays and holidays, and (b) payment on basis of minimum day of eight hours for each day upon which service was performed.

EMPLOYEES' STATEMENT OF FACTS: Charles Taylor and W. L. Leonard were nominally employed as "Extra Truckers" in the Lake Charles freight station in the months of November and December, 1942, the period involved here. While nominally designated as being "Extra Truckers," they worked with marked regularity as shown by the number of hours worked weekly in table below.

WEEK	TAYLOR	LEONARD
11- 1 to 11- 6	41' 15"	59' 25"
11- 7 to 11-13	56'	56'
11-14 to 11-20	63'	57' 50"
11-21 to 11-27	53' 50"	53' 50"
11-28 to 12- 4	63' 25"	51' 25"
12- 4 to 12-11	64' 45"	59' 45"
TOTAL (6 weeks)	342' 15"	338' 15"
WEEKLY AVERAGE	57'	56' 22"

Taylor worked 9 hours on Sunday, November 29, 1942, and both Taylor and Leonard worked Thanksgiving Day, November 26, 1942. These hours are included in figures shown in table above.

OPINION OF BOARD: Charles Taylor and W. L. Leonard were employed as truckers at Lake Charles, Louisiana, from November 1, 1942, and until December 12, 1942. During this period of time, Taylor averaged working 57 hours a week, while Leonard averaged working 56 hours and 22 minutes. Three other truckers at this point had regular weekly assignments of 48 hours each, with a fixed starting time daily. These three regular employes and Taylor and Leonard were doing the same kind of work. A division officer found additional truckers were needed to do this work and regular truckers were added to the force. Taylor and Leonard were then offered these new positions, but they declined this offer.

Carrier contends that Taylor and Leonard were not employes, but were "Casual" workers hired to perform extra service as needed. They had no fixed starting time, but reported for work as they saw fit.

The three regular truckers were laborers and are covered by Rule 1 of the current Agreement. It reads: "These rules shall govern the hours of service and working conditions of the following employes, subject to the exception noted below: * * *. Group Three: Laborers employed in and around stations, storehouses and warehouses." The work performed by Taylor and Leonard does not come within the exception named in this rule.

To support its contention that they are not employes, the carrier says neither Taylor nor Leonard filed an application for employment, nor had they been used sixty days as "extra laborers," and relies upon Rules 22 and 25 (a). They read:

"Rule 22. VALIDATING RECORDS. The application of new employes shall be approved or disapproved within sixty (60) days after applicant begins work. * * *"

"Rule 25 (a). INVESTIGATION. An employe who has been in service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation. * * *"

Rule 22 is found in Article III of the Agreement and deals with "Seniority," while Rule 25 (a) is found in Article IV, which deals with "Discipline and Grievances." They do not sustain the carrier's contention. To say that a carrier has sixty days to approve an application for employment and during that time he is not an employe covered by the rules, is not sound.

As before stated, Taylor and Leonard did the same work as the three regular truckers did at this point, and it follows that these two men were also covered by the agreement and since they worked more hours per week than the regular assignment called for, it also follows that they did not do "fluctuating or temporarily increased work" as those words are used in Rule 31. Therefore, Taylor and Leonard's work should have been governed by the rules of this Agreement.

The carrier, also, contends that this dispute is not properly before this Division because (1) the claim did not originate with the individuals, and (2) because under Rule 40, Article VI, these two employes did not make a claim in writing.

As to its first contention that the claim did not originate with the individuals, that was overruled in Award No. 137 of this Board. We adhere to that ruling. As to the second contention, the claim here is that of the Brotherhood, one of the parties to the agreement, against the carrier, the other party to the agreement, for having violated the rules of the agreement. The claims for penalty on behalf of Taylor and Leonard are merely incidental thereto. See Awards Nos. 1646 and 2282.

This claim is not one of "Discipline and Grievance," but is one for compensation, and, therefore, not barred by Article IV of the Agreement. See Awards Nos. 1060, 1403, 1411, 1839, and 1842.

Under the applicable rules and the facts shown by the record, the claim of the Brotherhood must be sustained.

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 the carrier violated the Agreement as contended by the petitioner.

AWARD

Claims (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.