

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**

**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 permit the Military Transportation Clerk in the Passenger Traffic Department to perform his regular assigned duties on Sundays and holidays and had those duties performed by other employees. Also,

(b) Claim that the Military Transportation Clerk now be paid eight (8) hours, at the rate of time and one-half, for each Sunday and holiday during the life of the violation.

EMPLOYES' STATEMENT OF FACTS: In January 1943 the Carrier established position of Military Transportation Clerk at Houston, Texas, in the Passenger Traffic Department.

Conference was held January 13, 1943, regarding proper rate of pay, and on January 23, 1943, the Assistant Chief Personnel Officer wrote the General Chairman, in part, as follows:

"Am agreeable to establishing the rates proposed by you as indicated above."

The position was bulletined on January 25, 1943, with rate of \$9.00 per day and an annual assignment of 306 days.

The work which was assigned to and performed by the Military Transportation Clerk on week days was, on Sundays and holidays, performed by Mr. Stephens, Passenger Traffic Assistant; Mr. Jackson, Assistant General Passenger Agent, and Mr. Rainbolt, Chief Rate Clerk. This arrangement continued until the latter part of May 1943, and thereafter the Sunday and holiday work was all performed by Mr. Stephens.

The Carrier agreed during conference May 28, 1943, that it was an agreement violation for Messrs. Jackson and Rainbolt to perform the work on Sundays and holidays, but continued to have the work performed by Mr.

The Carrier has shown that during the period the position of Military Transportation Clerk was on, the occupant of that position was used on nineteen (19) Sundays and holidays, working from three hours to six hours and thirty minutes on such Sundays and holidays, for which he was compensated on the minute basis at rate of time and one-half in accordance with the provisions of Rules 43(a) and 47 (quoted in Carrier's Statement of Facts).

With reference to that part of the Employees' Ex Parte Statement of Claim set forth in Paragraph (b) thereof, reading:

"(b) Claim that the Military Transportation Clerk now be paid eight (8) hours, at the rate of time and one-half, for each Sunday and holiday during the life of the violation."

In view of the fact that the Carrier has previously shown, as evidenced by the foregoing record, there was no violation of the Clerks' Agreement, as alleged by the Employees, there is no basis for the claim that the Military Transportation Clerk now be paid eight (8) hours at the rate of time and one-half for each Sunday and holiday during the life of the alleged violation.

When consideration is given to the following facts of record, viz:

1. All work in connection with military movements was originally handled by Mr. Stephens on the official position of Passenger Traffic Assistant;
2. The Passenger Traffic Assistant continued to handle a part of that work after the position of Military Transportation Clerk was established;
3. The position of Military Transportation Clerk was established as a **temporary** position for the purpose of **assisting** the Passenger Traffic Assistant in the handling of military and other special movements due to the work becoming too heavy for the Passenger Traffic Assistant to handle all of it together with his other duties which had also increased as a result of the war;
4. The position of Military Transportation Clerk was created with an assignment of 306 days per year and was not assigned to work on Sundays and holidays as evidenced by Carrier's Exhibit "A" reproducing the bulletin advertising the position;
5. It was known by the party making application for the position, and by the General Chairman who received a copy of the bulletin, that the position was not assigned to work on Sundays and holidays, but was assigned to work 306 days per year, and established for the purpose of temporarily assisting in the handling of military and other special movements during the period of the National Emergency.
6. In performing any work in connection with military movements on Sundays and holidays the Passenger Traffic Assistant was merely performing the same work he did prior to the position of Military Transportation Clerk being temporarily established, and the same work he continued to perform after that position was established, therefore, did not deprive the occupant of the position of Military Transportation Clerk from the performance of any work to which he was entitled under the conditions set forth in the bulletin advertising the position.

It is clearly evident that there is no basis for the contention and claim of the Employees as a result of the Passenger Traffic Assistant performing the work in question on Sundays and holidays. Therefore, it is the position of the Carrier that the claim of the Employees resulting from the Passenger Traffic Assistant performing work in connection with military movements on Sundays and holidays is without basis and should accordingly be denied.

OPINION OF BOARD: Prior to January 1943, all matters in connection with the movement of military trains over Carrier's lines were handled by E. M. Stephens, Passenger Traffic Assistant, at Houston, Texas. The position

held by Stephens was an official one. By the first of the year 1943 the number of military trains being operated increased to such an extent that it was necessary to establish the position of Military Transportation Clerk. The position was bulletined on January 25, 1943. The bulletin stated that the position was temporary and had an assignment of 306 days a year. In the bulletin the "Description of Duties" are defined as follows: "Assist in handling military and other special movements; some typing incident thereto". This position was discontinued on March 31, 1946.

On Sundays and holidays, there were ordinarily two or three hours of work to be performed during the period between February 1, 1943 and about June 1, 1943, and this work was rotated between Stephens, Assistant General Passenger Agent Jackson and Chief Rate Clerk Rainbolt. After complaint by the General Chairman, Jackson and Rainbolt were no longer used on Sundays and holidays, as the Carrier conceded that they were not within their rights in performing this work, but Carrier contended that Stephens had a right to continue to perform this work on Sundays, because he and Mitchell, the clerk assigned under the bulletin, did the work handling military transportation matters. The record shows that Mitchell did perform this work on Sundays and holidays on nineteen different occasions between September 1943 and March 1946, and was paid on the Call basis. Stephens continued to perform work on various Sundays and holidays.

The Petitioner contends that the work performed by Stephens on Sundays and holidays violated the Agreement and relies upon Rules 1, 2, 3, 5, 7, 9, 43 and 45, and the Memorandum Agreement effective November 1, 1940.

The Carrier's position is stated as follows:

"... the Carrier recognizes that only that part of the work assigned to and performed by the Military Transportation Clerk came within the scope of the Clerks' Agreement for the purpose of assisting the Passenger Traffic Assistant. The Carrier does not admit, but emphatically denies, that all of the work formerly performed exclusively by the Passenger Traffic Assistant and some of which he continued to perform was automatically placed within the scope of the Clerks' Agreement as a result of establishing the temporary position of Military Transportation Clerk. The Carrier does not deny that the Military Transportation Clerk had a right to perform the work in question on Sundays and holidays when his services were required on those days to assist in the handling of this work; but the Carrier does deny that the Military Transportation Clerk had the right to this work to the exclusion of the Passenger Traffic Assistant who originally performed all the work and continued to perform some of it after the position of Military Transportation Clerk was established."

This Board has repeatedly held that work covered by agreements cannot be removed from the scope and operation of the agreements arbitrarily. We have consistently held that work contemplated by the agreements, Rule 1 and 2, and the Memorandum Agreement, must be assigned to employees within the agreements, and for whose benefit the agreements were made, and this applies to Sunday, holiday and overtime work as well as regular week day work. See Awards Nos. 2071, 2549, 3191 and 3192. See also Rule 45(b).

Stephens had only the right to perform on Sunday and holidays the same work he performed on week days. He had no right to perform on Sundays and holidays the work that Mitchell, the Military Transportation Clerk, performed on week days. The record shows that some of the work assigned to the position of Military Transportation Clerk and performed by Mitchell during the week days, was performed by Stephens on the Sundays and holidays he worked. In fact, there is a statement in the record attributable to Jackson that on the Sundays and holidays, between 2½ and 3 hours of the work regularly performed by the Military Transportation Clerk during the week was being performed on Sundays and holidays. So, it is fair to assume that on the Sundays and holidays Stephens worked, there were at least between two

and three hours of Military Transportation work to be performed. Of course this was a violation of the Agreement as Stephens was not under the Agreement.

Awards Nos. 931, 1593, 2334 and 3211, relied upon by the Carrier, are not in point because they deal with a situation where an employee not covered by the Clerks Agreement, whose work became too much for him to perform and it was necessary to create the position for a clerk to help this employee. Later the work again became light enough so that the employee no longer needed the aid of a clerk and the clerk's position was abolished.

Under Claim (b) the Petitioner claims that the employee should be paid under Rule 43(b). This rule reads:

"Employees who are called regularly on Sundays and specified holidays shall be allowed a minimum of eight (8) hours at time and one-half rate, except as provided in Rule 47."

This record fails to affirmatively show that Stephens regularly performed work on Sundays and holidays. It is true there was a short period of time shown in the record that this work was performed on all Sundays and holidays, that is from about February 1 to about June 1, 1943. A reading of the entire record justifies an inference that not on every Sunday and holiday there was work performed in reference to the movement of military trains. Therefore, Rule 43(a), the Call Rule, applies, and not Rule 43(b).

It follows that the claim should be sustained for each Sunday and holiday that Stephens, Jackson or Rainbolt performed work in connection with the movement of military trains, and the payment for these days should be under Rule 43 (a).

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 shown by the Opinion.

AWARD

Claim sustained in conformity with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of December, 1946.

Dissent to Award 3360, Docket CL-3380

The record in this case is factually conclusive in its showing that Passenger Traffic Assistant Stephens, the occupant of an official position not within the Scope of the Agreement, regularly performed duties in connection with the movement of military trains and other special movements on all days of the week and as an inherent part of his position before, during and after the existence of the position of Military Transportation Clerk. The Opinion

largely takes cognizance of this factual evidence and in addition recognizes that the position of Military Transportation Clerk was created to **assist** in the performance of but not to exclusively perform this work. Hence, we must forcibly disagree with the basis of reasoning and the conclusions of this award in respect to the violation of the Scope of the Agreement in using the Passenger Traffic Assistant to perform this work on Sundays and holidays.

R. F. Ray

R. H. Allison

A H. Jones

C. P. Dugan

Member C. C. Cook absent.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3360
DOCKET CL-3380

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

NAME OF CARRIER: 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 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:

This Award is before this Division of the Board for interpretation. It is the contention of the Employees that the Award provides payment under Rule 43-(b), while the Carrier contends that the Award calls for payment under Rule 43-(a).

This Board can only interpret the Award that has already been adopted in this dispute and not make a new Award.

The Award adopted reads:

"Under Claim (b) the Petitioner claims that the employee should be paid under Rule 43-(b). This rule reads:

'Employees who are called regularly on Sundays and specified holidays shall be allowed a minimum of eight (8) hours at time and one-half rate, except as provided in Rule 47.'

This record fails to affirmatively show that Stephens regularly performed work on Sundays and holidays. It is true there was a short period of time shown in the record that this work was performed on all Sundays and holidays, that is from about February 1 to about June 1, 1943. A reading of the entire record justifies an inference that not on every Sunday and holiday there was work performed in reference to the movement of military trains. Therefore, Rule 43-(a), the Call Rule, applies, and not Rule 43-(b).

It follows that the claim should be sustained for each Sunday and holiday that Stephens, Jackson and Rainbolt performed work in connection with the movement of military trains, and the payment for these days should be under Rule 43-(a)."

From the above quotation, it seems plain to this Referee that the payments should be made under Rule 43-(a) and not under Rule 43-(b).

Referee Ernest M. Tipton, who sat with the Division as a Member when Award No. 3360 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 23rd day of September, 1947.