

Award No. 3551

Docket No. CL-3475

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
RR CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY.
CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.;
SAN ANTONIO, UVALDE & GULF RR CO.; THE ORANGE
& NORTHWESTERN RR CO.; IBERIA, ST. MARY & EAST-
ERN RR CO.; SAN BENITO & RIO GRANDE VALLEY RY.
CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW
IBERIA & NORTHERN RR CO.; SAN ANTONIO SOUTHERN
RY. CO.; HOUSTON & BRAZOS VALLEY RY. CO.;
HOUSTON NORTH SHORE RY. CO.; ASHERTON & GULF
RY. CO.; RIO GRANDE CITY RY. CO.; ASPHALT BELT RY.
CO.; SUGARLAND RY. CO.**

(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement at Harlingen, Texas, when it failed and refused to transfer Mr. W. C. Carden from position of Yard Clerk to position of Check Clerk until August 20, 1945. Also,

(b) Claim that Mr. Carden be paid at the rate of \$7.82 per day July 31st to August 19th both dates inclusive, in addition to the amount he has actually been paid.

EMPLOYEES' STATEMENT OF FACTS: On July 18, 1945, and prior thereto, Mr. Carden was assigned to position of Yard Clerk at Harlingen with hours 7:00 A. M. to 4:00 P.M.

On July 18, 1945 Mr. Carden's position was bulletined because of change in the assigned day of rest.

Mr. Carden requested authority to displace Check Clerk at Harlingen, rate \$7.82 and hours 12:01 A.M. to 8:00 A.M., effective July 25, 1945 which request was granted. However, the Carrier held Mr. Carden on the Yard Clerk's position through August 19th.

POSITION OF EMPLOYEES: The fundamental facts in this case cannot be successfully denied. Mr. Carden requested, and was granted authority to displace the Check Clerk at Harlingen, Texas, with hours 12:01 A.M. to 8:00 A.M., effective July 25, however, the Carrier held him on the Yard Clerk's position, hours 7:00 A.M. to 4:00 P.M., through August 19th.

ing been made by the Employes and allowed by the Carrier on the basis of the provisions of that rule.

4. No claim similar to the one here involved has ever been allowed by the Carrier; but claims have been disposed of on the same basis as payment made to Mr. Carden by the Carrier in the instant case.

5. The claim here presented for \$7.82 per day, in addition to allowance that has been made, for each day during the period in question obviously does not represent "losses sustained" by Mr. Carden as contemplated by Rule 9(g), for the reason that had he been placed on the position of check clerk in accordance with the provisions of that rule he would not have earned and would not have been paid two days' pay for each day worked. The "losses sustained" by Mr. Carden amounted to \$16.31, for which loss he has been compensated.

Based on the above facts, it is the position of the Carrier that the contention of the Employes as set forth in paragraph (b) of their Statement of Claim reading:

"(b) Claim that Mr. Carden be paid at the rate of \$7.82 per day July 31st to August 19th, both dates inclusive, in addition to the amount he has actually been paid."

is without merit or basis and the claim should, therefore, be denied.

OPINION OF BOARD: Claimant requested authority to displace the Check Clerk at Harlingen, Texas. The request was granted, effective July 25, 1945. Due to the fact that no employe was available to work Claimant's position of Yard Clerk, he was held on his old position through August 19, 1945. The Organization contends that this constituted a violation of Rule 9(g), current Agreement, which provides:

"Employes awarded bulletined positions, or exercising displacement rights, will be transferred within five (5) days or paid for all losses sustained, if Carrier's fault."

The penalty provisions of this rule became operative from July 31, 1945 to August 19, 1945, inclusive. The Organization contends that Claimant is entitled to a full day's pay of his new position for each day he was held from it in excess of five, in addition to the pay earned on the old position. The Carrier contends that he is entitled only to the difference between the amount earned and the amount he would have earned on the new position during the period. This difference in pay amounts to \$16.31 and has been paid the Claimant.

Under the provisions of the cited rule, Claimant is entitled only to the difference between his earnings as Yard Clerk and what he would have earned as Check Clerk, there being no items of loss claimed other than compensation. The record discloses that similar claims have been made to this Carrier over a period of time in which the Organization claimed, and the Carrier paid, on the basis herein announced. This mutual construction of the Agreement by the parties themselves affords convincing proof as to what the parties intended the rule to mean. The adjustment of compensation made by the Carrier is in accord with the Agreement and with the construction which the parties have placed upon it in the past as well. No basis for an affirmative award exists.

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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.