

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 CO.; THE ST. LOUIS, BROWNSVILLE AND MEXICO
RY. CO.; THE BEAUMONT, SOUR LAKE AND WESTERN RY.
CO.; SAN ANTONIO, UVALDE & GULF RAILROAD CO.;
THE ORANGE AND NORTHWESTERN RAILROAD CO.; IBERIA,
ST. MARY AND EASTERN RAILROAD CO.; SAN BENITO AND
RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS AND
MEXICO RAILWAY CO.; NEW IBERIA AND NORTHERN RAIL-
ROAD CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON
AND BRAZOS VALLEY RAILWAY CO.; HOUSTON NORTH
SHORE RAILWAY CO.; ASHERTON & GULF RAILWAY CO.;
RIO GRANDE CITY RY. CO.; ASPHALT BELT RAILWAY CO.;
SUGARLAND RAILWAY CO.**

(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement beginning March 22,
1946, when it discontinued the position of Military Transportation Clerk at
Houston, Texas, and assigned the work to an employe not covered by the
Clerks' Agreement. Also,

(b) Claim that the Carrier now be required to correct the Agreement
violation, and that all employes involved in or affected by the violation be
compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: On March 21, 1946 and prior
thereto there was a position in the Assistant Passenger Traffic Manager's
Office at Houston, Texas, designated as Military Transportation Clerk with
rate of \$9.72 per day.

The duties of the Military Transportation Clerk were to handle military
and other special passenger movements.

Passenger Traffic Assistant; in fact is and always has been a part of the duties of the Passenger Traffic Assistant;

2. The Passenger Traffic Assistant continued to handle a part of the work in question and supervised all of it 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. It was known by the party making application for the position, and by the General Chairman who received a copy of the bulletin advertising the position of Military Transportation Clerk, that the position was temporary and that it would eventually be discontinued;

5. The previous rulings of this Honorable Board in several other similar cases, each of which denied the contention and claim of the Employees;

it is clearly evident that there is no basis for the contention and claim of the Employees as a result of the Carrier discontinuing the position of Military Transportation clerk and turning back any remaining work of that position to the Passenger Traffic Assistant from which it was taken. Therefore, it is the position of the Carrier that the contention of the Employees be dismissed and the accompanying claim accordingly denied.

OPINION OF BOARD: In January, 1943, the Organization and the Carrier agreed upon the assignment and rate of pay of the position of Military Transportation Clerk. The position was discontinued effective March 22, 1946, and the remaining duties were reassigned to the Passenger Traffic Assistant, a position not covered by the Clerks' Agreement. The Organization contends that this was a violation of Rule 1 (b) of the Agreement, which provides:

"Positions referred to in this agreement belong to the employees covered thereby and no position shall be removed from this agreement except by agreement."

We think the position of the Organization is the correct one. The position was created by negotiation with the Clerks' Organization and the duties of the position clearly belonged to the Clerks. The work being that of clerks, it could not be removed from the agreement except by agreement. This is the effect of the holding in Award 3360 rendered in a similar case between the same parties.

The Carrier contends that the work of this position resulted solely from the increased duties of the Passenger Traffic Assistant due to the movement of military trains over Carrier's lines. When the work of the Passenger Traffic Assistant decreased following the close of the war, the Carrier claims that it can properly discontinue the position of Military Transportation Clerk and reassign the remaining duties to the Passenger Traffic Assistant, the place from whence they originally came and to which they were incidental, in accordance with the holdings in Awards 1314, 1593, 2334 and 3211.

The foregoing awards do not apply because of the express provisions contained in the confronting agreement to the effect that "no position shall be removed from this agreement except by agreement." Consequently, we are required to say that the rule in those awards cannot be applied because of the contrary provision contained in the current agreement. An affirmative award is required.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice on 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 Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3563

DOCKET CL-3542

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Em-
ployes

NAME OF CARRIER: Gulf Coast Lines; International-Great North-
ern Railroad Company; The St. Louis,
Brownsville & Mexico Railway Co.; The Beaum-
ont, Sour Lake & Western Railway Co.;
San Antonio, Uvalde & Gulf Railroad Co.; The
Orange & Northwestern Railroad Co.; Iberia,
St. Mary & Eastern Railroad Co.; San Benito
& Rio Grande Valley Railway Co.; New Or-
leans, Texas & Mexico Railway Co.; New
Iberia and Northern Railroad Co.; San An-
tonio Southern Railway Co.; Houston &
Brazos Valley Railway Co.; Houston North
Shore Railway Co.; Asherton & Gulf Railway
Co.; Rio Grande City Railway Co.; Asphalt
Belt Railway Co.; Sugarland Railway Co.
(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 Award upon which an interpretation is sought holds that the provisions of the applicable contract specifically provide that "no position shall be removed from this agreement except by agreement". It is not disputed that the work of the position was assigned to the Passenger Traffic Assistant by the unilateral action of the Carrier. The Award clearly and unequivocally holds that this cannot be done under the terms of the applicable contract specifically quoted. The Award is so clear in that respect that it is not subject to construction.

The Carrier undertakes to review the correctness of the Award and to question the reasoning which sustains it. Such a review cannot be had on an application to interpret or clarify the meaning of an award. This is so, even if the conclusion reached is incorrect or its reasoning faulty. It being clear that the Award in question clearly states that the remaining work of the former position of Military Transportation Clerk could not be reassigned to the Passenger Traffic Assistant except by negotiation, this contention of the Carrier is not properly before the Board in the present proceeding.

It is urged that the subsequent assignment of the remaining work of the position to the Chief Rate Clerk, a position within the scope of the Agreement but excepted from the provisions of the Overtime, Call and Sunday and Holiday rules, is not a proper application of the controlling agreement and,

therefore, does not constitute a correction of the violation found to exist in the award before us for interpretation. We are of the opinion that the remaining work of an abolished position which was within the Clerks' Agreement, may properly be assigned to any position within the scope rule of that Agreement. This is so whether or not such position to which it was assigned is excepted from some of the rules of the Agreement. It is argued that as the abolished position was placed under all the rules of the Agreement by negotiation that the remaining work could not be assigned to a partially excepted position except by negotiation. The answer to this contention is that the occupant of the position and not the work is excepted from the specified rules. The parties have already agreed in Rule 7(c) that certain rules do not apply to the position to which this remaining work was assigned. But the work still remains within the scope of the agreement and its assignment to the Chief Rate Clerk is in accordance with the contract made.

Consequently, the assigning of the remaining work of the Military Transportation Clerk to the Chief Rate Clerk meets the requirements of the controlling agreement even though the latter position is one of the positions included in Rule 7(c) of the Clerks' Agreement and thereby excepted from Rules 37, 43 and 47 thereof.

Referee Edward F. Carter, who sat with the Division as a member when Award No. 3563 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 19th day of May, 1948.