

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTH-
ERN RR. CO.; THE ST. LOUIS, BROWNSVILLE AND MEXICO
RY. CO.; THE BEAUMONT, SOUR LAKE AND WESTERN RY.
CO.; SAN ANTONIO, UVALDE AND GULF R.R. CO.; THE
ORANGE AND NORTHWESTERN R.R. CO.; IBERIA, ST.
MARY AND EASTERN R.R. CO.; SAN BENITO AND RIO
GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS AND
MEXICO RY. CO.; NEW IBERIA AND NORTHERN R.R. CO.;
SAN ANTONIO SOUTHERN RY. CO.; HOUSTON AND BRA-
ZOS VALLEY RY. CO.; RIO GRANDE CITY RY. CO.; AS-
PHALT 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 Palestine, Texas, on Sundays, September 16 and 23, 1945, when the Division Engineer took record of investigations in connection with discipline cases. Also

(b) Claim that M. F. Henry be paid for all losses sustained because of these violations.

EMPLOYEES' STATEMENT OF FACTS: Mr. Henry is regularly assigned to the position of Steno-Clerk in the Division Engineer's office at Palestine, Texas. His regular assigned duties include—

"Take and transcribe Maintenance of Way investigations."

On September 16 and 25, 1945, Maintenance of Way investigations were held and the record was taken by the Division Engineer and given to Mr. Henry the following days for typing.

The investigation of December 16 consisted of six typewritten pages. It began at 9:15 A.M. and was completed at 11:10 A.M.

The investigation of September 23rd began at 7:55 A.M. and was completed at 9:40 A.M., and consisted of eight typewritten pages.

In the light of all the facts and circumstances as set forth in the foregoing record it is the position of Carrier that there is no basis or justification for the claim presented and accordingly the contention of the employees should be dismissed and the claim denied.

OPINION OF BOARD: M. F. Henry, a steno-clerk, employed in the Division Engineer's office of the Carrier at Palestine, Texas, had as one of his bulletined duties the taking and transcribing of Maintenance of Way Investigations. Sunday was his day off. On two successive Sundays, September 16 and 23, 1945, the Division Engineer conducted Maintenance of Way investigations and took them down himself, giving his longhand records to Henry the succeeding Mondays for typing. The investigation of September 16 lasted 1.55, while the one the following week lasted 1.45.

The Organization claims violation of the agreement and asks that Henry be paid for all losses.

Section (a) of the Memorandum of Agreement made between the parties, effective November 1, 1940, and continued by a Board of Arbitration by an award of November 9, 1944, and effective at the time of this dispute, provides, in part

" . . . that all of the work referred to in Rule 1 of the agreement dated November 1, 1940 . . . belongs to and will be assigned to employees holding seniority rights and working under the Clerk's Agreement. . . ."

The clear wording of the bulletined job-description cited above leaves no doubt that the work of taking a Maintenance of Way investigation belonged to a Group 1 position under the Clerks' Agreement—in this instance to Henry. When the Division Engineer failed to call him for the work, the agreement was breached.

The proper restitution (Rule 43) appears to be a call for Henry for each of the two violations. Each investigation consumed a few minutes less than the two-hour minimum provided under Rule 43 for a call, which is as near to the actual working time as can be measured without a great deal of speculation.

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 stated in the Opinion.

AWARD

Claim sustained to the extent that claimant should receive a call as defined by Rule 43 for each violation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1947.