

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

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

JACKSONVILLE TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees: 1. That the carrier violated rule 49 of the agreement effective February 1, 1944, and agreement effective December 26, 1945, also paragraph 3 of the Federal Manager of Government Controlled Railroads Notice and Order No. 1, dated May 17, 1946, by refusing employment to employees covered by our rules, on May 24 and 25, 1946.

2. That all employees assigned to regular positions covered by these rules, who were refused employment on May 24 and 25, 1946, be paid for monetary loss because of rules violations.

EMPLOYEES' STATEMENT OF FACTS: Rule 49 of agreement between the parties to this dispute reads as follows:

"Employees covered by Group (1) and (a) Rule 1, heretofore paid on a monthly, weekly or hourly basis, shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.

Nothing herein shall be construed to permit the reduction of days for the employees covered by this rule below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays.

Agreement dated Dec. 26, 1945 reads as follows:

"As an addenda and to supersede rule 47 of agreement effective November 16, 1944 the following is agreed to for all group 3 employees in the Baggage and Mail Department of Jacksonville Terminal Company.

"Two thirds of all Group 3 employees will be assigned to work 7 days per week and will be paid time and one half for all Sunday and Holiday work, the Holidays being those set out in rule 47 of agreement.

"One third of all group 3 employees will be assigned to work six days per week, with Monday or Tuesday as relief day and will be paid straight time for all days worked except the 7 holidays

of their own are released before a full day's work is performed will be paid not less than eight (8) hours' pay unless they lay off of their own accord. This guarantee will not be construed to apply to those who are employed to take care of the fluctuating work that cannot be handled by regular forces."

Rule 38 was inserted in the Agreement for some purpose. It has been retained in each agreement negotiation between the Company and the Organization. An examination of the rule leads to the inevitable conclusion that the only possible purpose of the rule was a situation substantially similar to the condition with which this carrier found itself faced on May 23, 1946. That the strike of the engineers and trainmen, which effectively stopped all service performed by the Company, was an emergency "beyond the control" of this Company, goes without question. An Emergency Board had recommended wage increase for the engineers and trainmen; this carrier, in company with all other carriers, had agreed to put that wage increase into effect. The Emergency Board report had been rejected, not by the carriers, but by the engineers' and trainmen's organizations, who demanded something above and beyond what the Fact Finding Board had found to be a fair and reasonable wage increase. This Company had no control over the actions of those two organizations. Its service was disrupted, and it had no work for its clerks to perform. There was no possible way in which this Company could provide work for its clerks to perform, and we respectfully submit that Rule 38 specifically authorizes the action which it took in notifying its clerks not to report for service until service was available. The clerks were recalled as soon as the emergency was over and there was work to be done by those employees.

Exhibit I attached hereto is a copy of the Agreement of December 26, 1945. The Board is supplied with copies of the existing Agreement between the Clerks' Brotherhood and the Jacksonville Terminal Company, but the rules involved in the complaint are quoted herein verbatim.

The respondent Carrier reserves the right, if and when it is furnished with the ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

(Exhibits not reproduced.)

OPINION OF BOARD: The issues involved in this dispute are identical with those involved in the dispute covered by Docket CL-3704 in which we have this day rendered an award.

Rule 49, cited in the instant Docket, is identical to Rule 60 in the Agreement considered in Docket CL-3704, and covers Groups 1 and 2 employees.

A memorandum Agreement of December 26, 1945, guaranteed either six or seven days work per week to Group 3 employees.

For the reasons assigned in Award 3723 this day written in Docket Number CL-3704, we hold that the Carrier violated the applicable Agreements in the instant dispute.

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 31, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the applicable Agreements as contended by the claimants.

AWARD

The claims presented by this Docket are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1947.