Award No. 3761
Docket No. CL-3582

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES: INTERNATIONAL-GREAT NORTHERN R. R. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN ANTONIO, UVALDE & GULF R. R. CO.; THE ORANGE & NORTHWESTERN R. R. CO.; IBERIA ST. MARY & EASTERN R. R. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA & NORTHERN R. R. CO.; SAN ANTONIO SOUTHERN RY. CO.; HOUSTON & BROZOS 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 Robstown, Texas, on February 3, 10, 17; March 3, 10, 24 and April 7, 1946, when it failed to call Cashier E. J. McGlathery to perform work regularly assigned to, and performed by, him on week days. Also

(b) Claim that Mr. McGlathery now be paid eight hours, at the rate of time and one-half, on each of the dates named.

EMPLOYES' STATEMENT OF FACTS: Mr. McGlathery is assigned as Cashier at Robstown, Texas, with hours 7:00 A. M. to 4:00 P. M., 306 days annually.

His regular duties include the handling of billing and accomplishing "stop" instructions on other cars.

On the Sundays here involved Mr. McGlathery was not called to perform the above work and it was performed by others.

On February 3, 10 and 17 the work was performed by the Agent and the Porter.

perform this work; that effective March 1, 1946, due to the increased amount of this work during the vegetable loading season, he was then required to perform billing work in addition to his other week day duties. Therefore, as of March 1, 1946, the General Clerk was not only assigned to do billing but was actually regularly performing billing work as provided by the bulletin covering that position (Carrier's Exhibit "C"). This being so there was no violation of Rule 45(b) in using him to perform this work on the three Sundays in March and one Sunday in April, as contended by the Employes. On the contrary Rule 45(b) was complied with. There is nothing in Rule 45(b) requiring the Carrier, where two or more employes are performing the same class of work with different rates of pay, to use the employe having the highest rate of pay. That rule merely provides that if any overtime is worked before or after assigned hours, or on Sundays and holidays, the employe regularly assigned to the class of work for which overtime is necessary shall be given preference. Certainly it cannot be denied that the General Clerk was regularly assigned to perform billing work during the period in question, and, therefore, he was properly used on Sundays, March 3, 10, 24, and April 7 to perform billing work during the period in question, and, therefore, he was properly used on Sundays, March 3, 10, 24, and April 7 to perform the same work he was assigned to perform and did regularly perform on week days.

In the foregoing the Carrier has shown that under the provisions of Memorandum Agreement effective November 1, 1940, the Carrier had the right under the circumstances existing in this case to use the Agent to perform billing on the three Sundays in February i. e., February 3, 10, and 17, 1946; the Carrier has also shown that use of the General Clerk on the remaining Sundays involved in this claim, i. e., March 3, 10, 24, and April 7, 1946, during which period of time the General Clerk was assigned to and was regularly performing the billing work on week days, the use of the General Clerk on those Sundays was in accordance with the provisions of Rule 45(b) which the Employes contend was violated.

In the light of the record it is clearly evident that there is no basis for the contention of the Employes that Rule 45(b) of the Clerks' Agreement was violated by reason of using the Agent and the General Clerk to perform billing work on the Sundays in question, and accordingly there is no basis for the claim that Mr. McGlathery be paid eight hours at the rate of time and one-half on each of the Sundays named in the Employes' Ex Parte Statement of Claim.

Therefore, it is the position of the Carrier that the contention of the Employes be dismissed and the accompanying claim denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee contends the Carrier violated their agreement when it failed to call Chief Clerk (Cashier) E. J. McGlathery to perform the work of billing cars at Robstown, Texas, on the following Sundays, to-wit: February 3, 10 and 17; March 3, 10 and 24; and April 7, all in 1946. It asks that he be compensated on each of said days for a period of eight hours on an overtime basis.

The facts separate the claim so we will discuss it in two parts. The first, to cover the three Sundays in February; and the second, to cover the three Sundays in March and the one in April.

The Rules of the parties agreement, so far as here pertinent, are as follows:

> **Rule 45(b):** "In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on Sundays and holidays."

Rule 43: "(a) Except as provided in Paragraph (b) of this rule, employes notified or called to perform work not continuous with, before or after the regular work period, or on Sundays and specified holidays, shall be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on a minute basis.

"(b) Employes 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."

On January 10, 1946, Claimant was, by bulletin, regularly assigned to the position of Chief Clerk-Cashier and, on February 1, 1946, commenced work at Robstown, Texas. Although the bulletin did not assign to his position the duties of billing cars, nevertheless, during the month of February Claimant was actually assigned to and did do this work for a period of from two to three hours every week day. However, on February 3, 10 and 17, 1946, which were Sundays, the Carrier required its agent at Robstown, an employe not within the agreement, to do this work. Carrier violated the agreement in so doing as under Rule 45(b) of the agreement that class of work belonged to employes who were regularly assigned thereto.

Carrier seeks to justify its action by provision (b) 2 of their effective Memorandum Agreement. This provides as follows:

> "At stations where two employes not covered by the Clerks' Agreement are on duty at the same time and the work covered by the Clerks' Agreement is less than five hours the Carrier may assign such work to those two positions."

This provision has application only when the conditions referred to regularly exist. It does not apply to a situation, such as here, where the work is regularly done on week days by employes under the agreement. If, under the latter situation, part of the same class of work exists on Sundays it must be assigned to and performed by employes entitled to it thereunder. This provision does not permit the Carrier to do otherwise.

On March 3, 10, 24 and April 7, 1946, which were Sundays, the work of billing cars was assigned to and performed by General Clerk Stewart, an employe within the parties agreement. It appears that this work was assigned to the General Clerk by bulletin but he did not perform any of this class of work prior to March 1, 1946. Commencing with that date he did this class of work every week day between 7:00 and 8:00 A. M. Any balance of the work remaining unfinished was then performed by Claimant. It appears there was about two or three hours of this type of work every day and was primarily due to the vegetable shipping season, which runs through February, March and most of April.

We find that Claimant and General Clerk Stewart were both employes regularly assigned to the class of work of billing cars and, in the absence of any showing that Claimant had any superior or exclusive right thereto, the Carrier was justified in selecting and requiring either to do the work.

The claim is therefore sustained as to February 3, 10 and 17, 1946, and denied as to March 3, 10, 24 and April 7, 1946.

Carrier contends that the claim, if allowed, should be limited to Rule 43(a) rather than 43(b). With this we cannot agree. While the vegetable shipping season was seasonal and limited in length of duration, nevertheless, it was regular while it lasted and required billing of cars on every day of the week. If the Carrier had called the employes who were entitled thereto, it would have called the Claimant regularly on each Sunday during the month of February. The claim is therefore allowed under provisions of 43(b).

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 the Carrier has violated the Agreement.

AWARD

Claim sustained as to February 3, 10 and 17, 1946, but otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1948.