Award No. 4314
Docket No. CL-4200

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN RR. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN ANTONIO, UVALDE & GULF RR. CO.; THE ORANGE & NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN 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 Houston, Texas on January 1, 1947 when it reduced the annual assignment of General Clerk from 365 days to 306 days and refused to increase the daily rate of pay so that the earnings would be the same. Also

(b) Claim that Carrier be required to make proper increase in the daily rate of pay retroactive to January 1, 1947 and that all employes involved in or affected by the agreement violation be compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: Prior to January 1, 1947 the General Clerk in Houston Freight Station was assigned and worked 365 days annually and was paid pro rata rate for Sundays and holidays. This arrangement was by agreement made in July 1942 and was for the duration of the war.

On January 1, 1947 the Carrier reduced the annual assignment to 306 days but failed and refused to increase the daily rate so that the earnings would remain the same.

not think that Rules 50 (a) and 52 (a) have any application to the issue presented by this record."

It will be noted that the Clerks' Organization cited Award No. 1614 in support of the case covered by this submission, but your Board stated in above Award 3420 that Award No. 1614, as well as several other Awards cited by the Employes in that case, involved claims made by or on behalf of occupants of positions unnecessary to the continuous operation, which had been, or should have been, reduced from 365 to 306 day positions, and they certainly were not authority for holding that the Letter Agreement was in any way designed to disturb rates of pay of other positions. The position of General Clerk, covered by the instant case was not necessary to the continuous operation of the Carrier, neither were the various other positions covered by the Special Agreement of July 24, 1942, as it had been agreed between the parties that they were not and they had been reduced to 306 days in accordance with the Letter Agreement of October 13, 1940, and later by agreement worked on Sundays and holidays for the duration of the War at pro rata rate, in order to expedite the handling of shipments of war and other essential materials and supplies. This was, however, only a temporary arrangement and it was not intended nor expected that this temporary arrangement would in any way disturb the rates of pay of any of the positions included therein and, as heretofore stated, there is no more sound reasoning in the Employes' contention that the rate of the General Clerk position should be adjusted than there would be for the contention that rates of all other positions covered by the Letter Agreement of July 24, 1942 should be adjusted. As the rates of these positions had been adjusted when they were reduced from 365-day to 306-day assignments, in accordance with Award No. 1614 and the Letter Agreement of October 13, 1940 (these positions being assigned on the basis of 306 days per year, they would, of necessity, come in the same category as the General Clerk position), the Employes have conceded that they were not entitled to an adjustment in rates of pay, even though they had temporarily worked on Sundays and holidays for the duration of the War, and resumed their regular assignment of 306 days per year on January 1, 1947, or at the end of the War, the same as the General Clerk position, which was in accordance with the Letter Agreement of July 24, 1942. Therefore, it is the Carrier's further request that the claim should be denied, as it is entirely without merit.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts giving rise to the present claim are not in dispute.

On October 13, 1940, Carrier and the General Chairman of the Brotherhood entered into a letter agreement providing that all 365-day assignments, *not necessary to the continuous operation of the Carrier will be reduced to* 306 days and that the daily rate will be adjusted so that the earnings would be the same as received for 365 days. July 14, 1942, again by letter agreement, the position of General Clerk at Houston Freight Station along with others in the same office was changed from a 306-day assignment to a seven-day assignment, at pro rata rate for the duration of the war with the further understanding that at the end of the war the positions would revert back to a 306-day assignment. The record further reveals that this General Clerk's position was newly established May 20, 1940, on a 306-day per year assignment. The General Clerk position, with the cessation of hostilities was reduced to a 306-day assignment effective January 1, 1947. Employes contend that under the October 13, 1940 Agreement the daily rate of this position should now be adjusted upward.

The determination of this question turns upon the interpretation to be given the October 13, 1940 agreement. Reference is made by Employes and Carrier to numerous awards interpreting the same, each contending that the precedents set thereby uphold their respective contentions. The awards referred to, however, are not based upon identical fact situations and deal *with problems other than that presented by the instant dispute, e.g., a* determination as to what positions are necessary to the continuous operation

of the Carrier (Award 1614) or whether or not a change in rate as a result of the operation of the agreement constitutes the position affected a new position (Award 2008).

It is obvious that the true purpose and intent of the October 13, 1940 agreement was to achieve the reduction of 365-day positions unnecessary to *continuous operation to 306-day positions and at the same time to protect* the occupants of such positions in their annual earnings. It appears, therefore, for a position to come within the provisions of the agreement, it must have been originally established as a 365-day position. Now, this position of General Clerk was originally established as a 306-day per year assignment and prior to the special agreement of July 1942, in our opinion was in no way affected by the 1940 agreement. Did the fact that the position was put on a seven-day assignment under the 1942 letter agreement bring it within the coverage of the 1940 agreement? It would seem logical to assume that the purpose of the 1942 agreement was to constitute the positions mentioned therein separate and apart and not subject to the operation of the 1940 agreement when they reverted to a 306-day assignment at the end of the war. It seems instinct in the 1942 letter agreement itself that the positions mentioned therein were considered as 306-day positions and made seven-day-a-week positions only for the duration of the war. In this connection, the letter of the General Chairman to Carrier's Chief Personnel Officer is revealing. He says:

> "The understanding regarding these positions was that they would be assigned on a 365 day annual basis with pro rata pay for Sundays and holidays for the duration of the war and since the surrender of the last armed enemy forces, this arrangement is no longer in effect, and these positions should now be paid at the rate of time and one-half for service performed on Sundays and holidays.
>
> The position of General Clerk at the Houston Freight Station was not involved in Award 1614 and in reducing the annual assignment of this position, the rate of pay must be adjusted so that the earnings will remain the same in accordance with provisions of Memorandum Agreement dealing with that subject."

It appears to us that this shows that the General Chairman was of the opinion that the rate of the General Clerk's position should be adjusted because it was not involved in Award 1614; not because of it having been made a 365-day position by reason of the July 14, 1942 agreement. In other words, the Chairman recognized that the effect of that agreement was to exempt the position from the premium pay on Sundays and holidays for the duration of the war.

Now then, if there is merit in the Employes' claim, the instant position must qualify for adjustment on the same basis as the other positions involved in Award 1614. The positions involved in that award were in existence prior to October 13, 1940, and assigned 365 days per year, and the issue involved was whether or not they were necessary to the continuous operation of the Carrier. This position was established as a 306-day position in May of 1940, and was a 306-day position at the time of the October 1940 agreement and was never constituted a 365-day position which was or became unnecessary to the continuous operation of the Carrier (as contemplated by the 1940 agreement) unless it could have been so made by reason of the July 1942 agreement, but as indicated above, we believe the General Chairman has, in effect, conceded that that was not the effect of said 1942 agreement.

We think the correctness of this conclusion is further evidenced by the fact that no adjustment is sought in the rates for the other positions included in the 1942 letter agreement, for it would logically follow that if the sole factor which subjected the General Clerk's position to the operation of the 1940 agreement was its inclusion in the later letter agreement, the same factor would require an upward adjustment in the rate of the other positions.

We have examined the file in CL-1753, Award 1700, which was withdrawn after Carrier voluntarily conceded Employes' claim, but we do not find anal-

ogous factual situations. In that case, the positions involved were all assigned 365 days on November 1, 1940, and prior thereto, whereas here the original assignment of the position was 306 days.

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 did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of February, 1949.