

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
RR CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY.
CO.; THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.;
SAN ANTONIO, UVALDE & GULF RR CO.; THE ORANGE &
NORTH-WESTERN 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 correct annual assignment of Oil Clerk, Position No. 84, is 365 days. Also

(b) Claim that the occupant of the position be paid at the rate of time and one-half for all Sundays and holidays retroactive to date the position was re-established in February 1948.

EMPLOYES' STATEMENT OF FACTS: In November 1944 two claims were filed with the Carrier involving 170 and 128 positions requesting that the annual assignments of those positions be reduced from 365 days to 306 days and that the rates of pay be increased so that the earnings for 306 days would be the same as they had been for 365 days. Three of the positions involved in one of the claims were designated as "Oil Clerks" and were located in the office of the Assistant General Superintendent of Transportation at Houston, Texas.

Conference between representatives of the parties was held on January 12, 1945. The Carrier was represented by Chief Personnel Officer, Mr. Roll; Assistant Chief Personnel Officer, Mr. Short; Wage Supervisor, Mr. Darnall; Assistant General Superintendent of Transportation, Mr. Ivey, and Supervisor of Transportation, Mr. Blanchard, all during the time consideration was being given to the position here involved.

At this January 12, 1945 conference the parties agreed that the Oil Clerk position working 8:00 AM to 4:00 PM., was necessary to the continuous operation of the Carrier and that it would continue to be assigned 365 days annually.

As evidenced by the June 1, 1947 Memorandum of Agreement the cancellation of the former Letter Agreement of October 13, 1940 was not handed the Carrier by the Employees on a silver platter, it was bought and paid for by the Carrier. Under the circumstances the present contention and claim of the Employees is indicative of bad faith and should be disposed of by your Board accordingly.

It is clearly evident from the foregoing that there is no basis or justification whatever for the contention of the Employees that the position of oil clerk when established in February, 1948, after having previously been discontinued in 1946, should have been established with an annual assignment of 365 days. Their contention is obviously entirely out of order under the plain provisions of the June 1, 1947 Memorandum of Agreement. Therefore, it is the position of the Carrier that the Employees' contention be dismissed and the accompanying claim accordingly denied.

Exhibits not reproduced.

OPINION OF BOARD: In August 1942, two positions designated as oil clerk were established on an annual assignment of 365 days. In January 1943, a third position of oil clerk was established on a similar basis. In January 1945, it was determined that one of the positions was necessary to the continuous operation of the Carrier and was retained on a 365-day annual assignment. It was also determined that the other two positions were not necessary to the continuous operation of the Carrier, and they were reduced to an annual assignment of 306 days without loss in annual earnings, pursuant to a Memorandum Agreement of October 13, 1940. On August 9, 1945, the two positions assigned on a 306-day annual basis were discontinued and on August 21, 1945, the position assigned 365 days per year was also discontinued. On April 23, 1946, a position of oil clerk on an annual assignment of 365 days was reestablished for a 90-day period as a temporary position. This position was discontinued on August 3, 1946. On February 18, 1948, the position was again reestablished for a temporary period of six months with an annual assignment of 306 days. The position was again discontinued on July 31, 1948. It is the contention of the Organization that the position should have been established on a 365-day annual assignment on February 18, 1948, and that the failure to so do constituted a violation of the Agreement.

The conversion of 365-day positions not necessary to the continuous operation of the Carrier to an annual assignment of 306 days without loss of annual earnings was in accordance with a letter agreement dated October 13, 1940. On June 1, 1947, the letter agreement was cancelled by a Memorandum Agreement of that date with the understanding that the Carrier would either maintain all 365-day annual assignments now in effect or preserve the annual earnings of such positions so long as such positions were in evidence.

The question here is whether the position in question was "in effect" (in existence) on June 1, 1947. If it was, the Carrier is obligated to maintain the 365-day assignment or reduce it to 306 days without loss of earnings. In determining this question the words used by the Carrier in making the assignment are of controlling importance. In bulletining the position the Carrier designated it as a "re-established position." The Carrier will not now be permitted to contend otherwise. See Award 3762. Since the position is the reestablishment of the position "in effect" (in existence) when the Memorandum Agreement of June 1, 1947, was entered into, the Carrier is obligated to assign the position on a 365-day annual basis or reduce it to 306 days without loss of annual earnings. An affirmative award is required.

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 agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1949.