

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John M. Carmody, 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 AND
NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EASTERN RR.
CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.; NEW
ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA AND
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 is violating the Clerks' Agreement at Mission, Texas, by having persons not covered by that agreement to call crews between 4:00 P. M. and 7:00 A. M. Also

(b) Claim that the porter at Mission be paid at the negotiated and agreed upon caller's rate of \$7.92 per day retroactive to date the calling work was assigned to that position. Also

(c) Claim that the porter be paid a "call" for each time a crew is called when the porter is off duty.

EMPLOYES' STATEMENT OF FACTS: On March 17, 1948 a joint survey and joint report was made by a representative of the Carrier and the Organization regarding the assignment and performance of work at Mission. The concluding paragraph of the report reads:

"It is our information that crews for three switch engines and the several trains operating in and out of Mission are being called by mechanical department forces."

"Palestine, Texas, February 2, 1949
BRC 47-47 (TJD)

Mr. J. L. Dyer
General Chairman, BRC
Houston 2, Texas

Dear Sir:

Referring to President Harrison's letter addressed to the Adjustment Board January 14, 1949 advising of intention to file ex parte submission within thirty (30) days from that date in the following claim:

'Claim of the System Committee of the Brotherhood that:

(a) The Carrier is violating the Clerks' Agreement at Mission, Texas, by having persons not covered by that agreement to call crews between 4:00 P. M. and 7:00 A. M. Also

(b) Claim that the porter at Mission be paid at the negotiated and agreed upon caller's rate of \$7.92 per day retroactive to date the calling work was assigned to that position. Also

(c) Claim that the porter be paid a "call" for each time a crew is called when the porter is off duty.'

This letter is for the purpose of confirming telephone conversation with Mr. Gould of your office last Friday, January 28, with respect to paragraphs (b) and (c) of the above quoted claim.

It is apparent that that part of the above claim involving the porter is based upon information contained in Superintendent Judd's letter to former General Chairman Griffith May 22, 1948, reading in part as follows: '* * * in this particular case we will have one porter-trucker call crews that he can during his tour of duty and will continue to permit Mechanical Department employees call such other crews as are not called by this porter-trucker'. However, in making some further investigation with this case after receipt of copy of Mr. Harrison's letter to the Board January 14, we are informed by the division people that the porter-trucker was not, as contemplated, assigned to call any crews at Mission due to the fact that this arrangement was not found practicable; that the calling of crews always has been and still is being performed by Mechanical Department employees.

The above is furnished for your information in view of the claim as set forth in paragraphs (b) and (c) of your proposed Statement of Claim.

Yours truly,

(Signed) T. SHORT"

(Exhibits not reproduced.)

OPINION OF BOARD: Except for differences in size of stations and some difference in number of clerks employed and in number of train and engine crews called during any twenty-four hour period, this case is on all fours with Award No. 4543. The same parties are involved and the same agreement applies, November 29, 1944, even to the special memorandum agreement effective November 1, 1940. Many of the same awards are relied upon by the Carrier and the Organization, respectively, in both cases.

The Mission, Texas, station that we are dealing with here appears to be smaller than Brownsville, dealt with in Award No. 4543. The report of a survey at Mission made jointly by representatives of the Carrier and the Organization on March 17, 1948, revealed that crews were being called by mechanical forces in spite of the fact that the Agreement specifically mentions "train and engine crew calling" and the November 1, 1940 Memorandum

Agreement says, "It is recognized and agreed that all of the work referred to in Rule 1 * * * belongs to and will be assigned to employees holding seniority rights and working under the Clerk's Agreement * * *." Some exceptions are listed but train and engine crew calling is not among them.

On May 16, 1948, the Superintendent said in a letter to the General Chairman:

"I am having this changed and have asked for authority to make the porter-trucker at Mission a porter caller, and to put on an additional porter caller, which latter will be kept on until after the vegetable season, after which he will not be needed."

May 22, 1948, the Superintendent again wrote the General Chairman:

"In this connection I wish to advise that our further investigation has developed that so far as Mission is concerned, clerical employees have never been used to call crews. This work has always been performed by mechanical department employees and it is the position of the management that this and other points where a similar condition exists that we are in our rights to continue to have this work performed by mechanical employees where we do not have clerical employees on duty and available to perform this service during their regular assigned tour of duty; however, in this particular case we will have one porter-trucker call crews he can during his tour of duty and will continue to permit mechanical department employees call such other crews as are not called by this porter-trucker."

The number of crews called and the calling times are set forth in the record.

In Award No. 213 we said, "Established practices and failure to prosecute claims have no bearing upon the interpretation of written agreements where the agreements are so clear and explicit on their face as to leave no doubt of their meaning."

In Award 4543 we said:

"Reference is made to past practices and the lateness of having the Agreement enforced. Long continued practices of the parties on the property are pertinent and may be controlling if the subject matter to which they relate is not clearly set forth and covered by the parties' Agreement and when it can be said that the Agreement is ambiguous with reference thereto, but, if, as here, the parties' Agreement as it relates thereto is clear and unambiguous then such long continued practices do not prevent the Agreement from being enforced according to its terms but monetary claims prior to the complaint asking for a proper application are generally denied."

Award No. 2326 was cited in case numbered Award 4543 as it is cited and relied upon by the Carrier here. Because the operating conditions are much the same here as they were in Horace, Kansas, we have given that Opinion serious consideration. It is a persuasive argument for the breaching of contract. We do not think it is necessary completely to disregard the philosophy set forth there, however, as it applies to economy of operation. Instead of applying that philosophy as a justification for violation of the Agreement, we think its force should be aimed at the obligation that lies on both parties to arrive at such modification jointly, as will meet the practical ends sought there by unilateral action.

The Agreement is superior to a practice. Award No. 4534.

We think it would only tend to confuse operations on this property, where two stations on the same line are involved, and the application of the Agreement if we were to repudiate the finding in Award No. 4543 or attempt to modify it. We therefore affirm it.

We do, however, distinguish the situation here, as indicated in our discussion of Award No. 2326, in the sense that in this smaller station at Mission there appears to be only one Group 2 clerk employed to whom "train and engine crew calling" belongs. Clearly there is not enough train and engine crew calling to keep one person busy throughout each of the three shifts. Some of the work already has been assigned to the day shift porter-trucker but not at the higher train and engine crew caller's rate referred to in Claim (b).

For the other shifts at this smaller station we urge a negotiated arrangement that will not throw an unnecessary burden on the Carrier while the integrity of the Agreement is being respected.

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 of 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.

AWARD

Claim (a) sustained. Claim (b) sustained. Claim (c) sustained to the extent of one call per shift at caller's rate on days when calls were made by others during the hours the porter was not on duty.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of December, 1949.