

Award No. 6257
Docket No. CL-6489

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank Elkouri, 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
& NORTHWESTERN RR. CO.; IBERIA, ST. MARY & EAST-
ERN 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.; HOUS-
TON 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 Conroe, Texas, by failing and refusing to increase the rate of pay for Porter position No. 350 to the negotiated and agreed upon Crew Caller's rate. Also

(b) Claim that the Crew Caller rate be made effective March 18, 1952, and that employes involved in or affected by the violation be compensated for all losses sustained.

EMPLOYES' STATEMENT OF FACTS: On June 1, 1943, Mr. E. L. Turner was assigned to position of Porter at Conroe, Texas. The duties as shown on the bulletin are—

"Regular station porter duties."

The regularly assigned hours of the Porter are 7:00 A.M. to 12:00 N., and 1:00 P.M. to 4:00 P.M.

Effective March 18, 1952, the work of calling train and engine crews was assigned to the Porter at Conroe.

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 through 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."

In the foregoing Award your Board reluctantly, because of the small amount of crew calling to be performed during his tour of duty as porter, ruled that the station porter should be paid at the Callers' rate. No crews are called during claimant's tour of duty as porter. (See also Award 4567).

Our review of Awards of this Division discloses none involving a contention and claim similar to the contention and claim here involved. The position here taken by the Employees that claimant should be compensated at the higher callers' rate of pay for his tour of duty as station porter from 7:00 A.M. to 4:00 P.M., Mondays through Fridays during which time no commensurate service is performed to justify the higher rate, is, to say the least, a rather unique one.

As we have previously pointed out, if claimant were calling any crews during his station porter's assignment from 7:00 A.M. to 4:00 P.M., we would unhesitatingly classify the position as a Caller-Porter and pay him the Callers' rate in accordance with Rule 50, supra. However, since this is not the case, the crew calling being performed several hours in advance of his porter assignment, separate and apart therefrom, it is the position of Carrier that claimant is being properly compensated therefor on the basis of a "Call" in accordance with Rule 43, supra. We believe that the position of the Carrier is not only supported by rules of the working agreement but that it is sound and equitable, and it should, therefore, be sustained.

The substance of all matters contained herein has been discussed in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: Regularly assigned hours for the porter position at Conroe, Texas, are from 7:00 A.M. to 12:00 Noon, and 1:00 P.M. to 4:00 P.M., Monday through Friday, with rest days on Saturday and Sunday. Effective March 18, 1952, the work of calling train and engine crews was assigned to the person holding the porter position at Conroe. The rate for the porter position is \$11.42 per day, whereas the rate for calling crews is \$12.18 per day—a difference of seventy-six cents (76¢) per day.

The crew calling work is performed before the regularly assigned starting time of the porter position. For the crew calling work, the Carrier has paid the holder of the porter position under the "call rule" of the applicable agreement [see Rules 43 and 37 (c-5)] at the crew caller rate of pay. The Employees voice no complaint as to this. However, for his regular tour of duty on days when crew calling work is performed, the Carrier pays the holder of the porter position the lower rate of that position. The Employees contend that he should be compensated at the crew caller rate also for working his regularly assigned tour of duty on each regularly assigned day that he performs crew calling work before the regularly assigned starting time of the porter position. Thus, the question involved in this case is what rate should be paid the incumbent of the porter position for working his regularly assigned tour of duty on days when he also

performs crew calling work before the starting time of his regularly assigned position.

The Employees base their claim on Rule 50 of the agreement, which Rule provides, in part:

"(a) Employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates for the full day while occupying such position or performing such work; employees temporarily assigned to lower rated positions or work shall not have their rates reduced."

The Carrier contends "that Rule 50 is applicable only to the regular 8-hour assignment of an employee." But the literal language of the Rule leaves strong doubt as to the validity of this contention. Rule 50 provides that "employees temporarily or permanently assigned to higher rated positions or work shall receive the higher rates **FOR THE FULL DAY** while occupying such position or performing such work (emphasis added)." This rule literally requires the higher rate "for the full day", and literally refers to "work" as well as to positions. Moreover, the Record discloses that on at least two instances the Carrier has paid claims made under Rule 50 where the work giving rise to the claim was performed **outside** the employee's regular 8-hour assignment (Westaco case, involving crew calling work both within and outside the employee's regular assignment, and Houston case, involving lower rated work outside the employee's regular assignment). While these two instances do not constitute such extensive "past practice" as to absolutely require allowance of the instant claim, they do lend strong support to the conclusion that Rule 50 means what it literally appears to say.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 per Opinion.

AWARD

Claim (a) and (b) sustained for each day Claimants performed crew calling work before or after their regularly assigned hours.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of July, 1953.