

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, 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, SOUTHERN 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 & NORTH-
ERN 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.**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated agreement and understanding between the parties when it denied the Rate Clerk at Palestine, Texas, the right to work his assigned position on Thanksgiving Day, Thursday, November 22, 1951; Christmas Day, Tuesday, December 25, 1951; and, New Year's Day, Tuesday, January 1, 1952, on which dates the position was blanked. Also

(b) Claim that the Rate Clerk be reimbursed the exact amount he would have earned had he been permitted to work on the dates named and on any subsequent date a like violation occurs.

EMPLOYEES' STATEMENT OF FACTS: The position of Rate Clerk at Palestine, Texas, is, by agreement between the parties to this dispute, a six day position as that term is used in Rule 37 (b-3); the parties having agreed in conference August 16, 1949 that the position is one —

"Where the nature of the work is such that employee(s) will be needed six (6) days each week. . ."

Prior to the inauguration of the 40-hour week the parties to this dispute held several conferences for the purpose of reaching an understanding and

Chairman of the Clerks' Organization on this property to the Chief Personnel Officer of this Carrier, serving formal notice on the Carrier under Section 6 of the Railway Labor Act and Rule 72 of the current Agreement, of the Organization's desire to revise and change certain rules of the Agreement, including Rule 37 (b-3), (b-4), and (c-5).

The Board's particular attention is directed to that part of the letter referring to 37 (b-3) where it is requested that the following language be added thereto:

"Six-day positions shall be filled six days per week;"—

and to 37 (b-4) where it is requested that the following language be added thereto:

"Seven-day positions shall be filled seven days per week."

If, as contended by the Employes, Rule 37 (b-3) and (b-4) requires that six-day positions be filled six days per week, and that seven-day positions be filled seven days per week, why should the Organization serve formal notice on the Carrier, under provisions of the Railway Labor Act, and Rule 72 of the current working Agreement, to write such provisions into those rules? The Carrier submits that the Organization's request is indisputable and conclusive evidence that the Employes, as well as the Carrier, are aware of the fact that Rule 37 (b-3) and (b-4) does not require that 6-day positions be worked six-days every week, nor that 7-day positions be worked seven days every week. The Employes' request has not, of course, been agreed to by the Carrier.

It is the position of Carrier that neither Rule 37, nor any other rule in the current working Agreement that became effective September 1, 1949, requires that the position here in question must be filled six days per week; and it is obvious from the foregoing request of the Employes that they, too, share this view. As has hereinbefore been shown, the contention of the Employes in the instant case is contrary to the intent and purpose of the 40-Hour Work Week Agreement.

In the light of the foregoing record, and in harmony with the plain provisions of the Agreement, particularly Rule 48 (b), the contention of the Employes should be summarily dismissed and the accompanying claim unqualifiedly denied.

The substance of matters contained in this submission has been the subject of discussion in correspondence and/or conference between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is that the Carrier violated the Agreement and the understanding between the parties when it denied the Rate Clerk the right to work his assigned position on certain specified holidays. This is a Six-Day Position and the holidays did not fall on a rest day.

The Board cannot find that the Carrier violated Rule 37 cited by the Organization or any of the rules of this Agreement. The claim is based on the Carrier's denial of the employee's right to work on the days in question and therefore, relates to "the work week of individual employees," as distinguished by definition under the "NOTE" in Rule 37 from the terms "Positions" and "Work". Under (b-1) the Carrier agrees to establish for all employees "a work week" consisting of five (5) days. The Carrier has fulfilled that obligation. Under Rule 48 (b), however, by express exception the Carrier has the right to reduce the days below five (5) per week in a week in which specified holidays occur within the days constituting the work week by the number of such holidays.

Rule 48 (b) precisely covers this factual situation and the Board could not sustain this claim without ignoring the clearly expressed intention of the parties as embodied in the rule.

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 Employe involved in this dispute are respectively Carrier and Employe 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1953.